



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 600 and 635**

**[Docket No. 220919-0193]**

**RIN 0648-BI08**

#### **Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries Management**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final action will modify Atlantic highly migratory species (HMS) bluefin tuna (bluefin) management measures applicable to the incidental and directed bluefin fisheries through an amendment to the 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP). Specifically, this rule will change several aspects of the Individual Bluefin Quota (IBQ) Program, including the distribution of IBQ shares to active vessels only, implementation of a cap on IBQ shares that may be held by an entity, and implementation of a cost recovery program. This rule will also modify bluefin fisheries by discontinuing the Purse Seine category and reallocating that bluefin quota to all of the other bluefin quota categories; capping Harpoon category daily bluefin landings; modifying the recreational trophy bluefin areas and subquotas; modifying regulations regarding electronic monitoring of the pelagic longline fishery as well as green-stick use; and modifying the regulation regarding permit category changes.

**DATES:** This final rule is effective on January 1, 2023.

**ADDRESSES:** Copies of the supporting documents, including the final environmental impact statement (FEIS), Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), the Three-Year Review of the IBQ Program, and the 2006

Consolidated HMS FMP and amendments are available from the HMS website at

<https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the HMS Management Division and to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find these particular information collections by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function.

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## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Atlantic bluefin fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*).

The 2006 Consolidated HMS FMP and its amendments are implemented by regulations at 50 CFR part 635. This final rule implements changes to the bluefin fishery under Amendment 13 to the 2006 Consolidated HMS FMP (Amendment 13). Additional information regarding bluefin management can be found in the Final Amendment 13 (which includes an FEIS, RIR and FRFA); Draft Amendment 13 (which includes a draft environmental impact statement (DEIS), draft RIR, and Initial Regulatory Flexibility Analysis (IRFA)) and proposed rule (86 FR 27686; May 21, 2021); the 2006 Consolidated HMS FMP and its amendments; the annual HMS Stock Assessment and Fishery Evaluation (SAFE) Reports, and online at:

<https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species>.

In 2015, NMFS published a final rule implementing Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510; December 2, 2014). That final rule implemented substantial changes to the regulation of bluefin fisheries including the creation of the IBQ Program. In 2019, NMFS completed its Three-Year Review of the IBQ Program (referred to hereafter as the “Three-Year Review”). The Three-Year Review found that the IBQ Program was successful in limiting bluefin incidental catch in the pelagic longline fishery, and providing flexibility in the IBQ system; however, it is likely that the IBQ Program also contributed to reduced revenue and fishing effort during 2015 to 2017. Further, the Three-Year Review noted that a different method of IBQ share distribution may warrant consideration. After releasing the Three-Year Review and considering other changes throughout the fishery, NMFS conducted scoping to consider addition changes to the bluefin fishery (84 FR 23020, May 21, 2019).

On May 21, 2021, NMFS published a proposed rule (86 FR 27686) and released Draft Amendment 13, which included a Draft Environmental Impact Statement (DEIS), and the Environmental Protection Agency (EPA) published a Notice of Availability of the DEIS (86 FR 27593). The proposed rule and Draft Amendment 13 contain background information on the potential changes to the fishery that are not repeated here. The original comment period on the proposed rule ended on July 20, 2021. Based on public requests, the comment period was extended until September 20, 2021 (86 FR 38262, July 20, 2021). NMFS held three public hearing webinars between June 8 and July 14, 2021 (86 FR 3087, June 7, 2021), and briefed the Gulf of Mexico, Mid-Atlantic, and New England Fishery Management Councils. NMFS held two discussions on Amendment 13 with the HMS Advisory Panel (May 25, 2021 and September 9, 2021). During the comment period, NMFS received 47 written comments from individual members of the public and a variety of entities including industry associations,

environmental organizations, and states. A summary of these comments and NMFS' responses are found below.

Taking into consideration public comment, NMFS prepared Final Amendment 13, which included an FEIS, RIR, and FRFA, and which analyzed the anticipated environmental, social, and economic impacts of a range of alternatives. NMFS considered 29 alternatives and is implementing 21 measures in this final rule. A summary of the preferred alternatives is provided below. The full list of alternatives and their analyses are provided in Final Amendment 13 and are not repeated here.

Overall, the objectives of this final rule and Amendment 13 are to: 1) Evaluate and optimize the allocation of U.S. bluefin quota among bluefin quota categories considering historical allocations and use, and recent fishery characteristics and trends, to provide U.S. fishing vessels with a reasonable opportunity to harvest the U.S. quota established by ICCAT, facilitate the ability for active HMS directed permit categories to harvest their full bluefin quota allocations, and facilitate directed fishing for species other than bluefin in the pelagic longline fishery while accounting for incidental bluefin catch; 2) Maintain flexibility of the regulations to account for the highly variable nature of the bluefin fisheries, and maintain fairness among permit/quota categories; 3) Continue to manage the Atlantic pelagic longline fishery consistent with the IBQ Program objectives in Amendment 7 and consistent with the conservation and management objectives of the 2006 Consolidated HMS FMP and its amendments, and consistent with all applicable laws; and 4) Modify the management of the pelagic longline fishery in response to the Three-Year Review and in response to important relevant prevailing trends (*e.g.*, declining fishing effort and revenue for target species). This final rule implements the preferred alternatives identified in the Final Amendment 13/FEIS.

In developing the final measures, NMFS considered these objectives, public comments on the proposed rule and Draft Amendment 13 (which included a DEIS, draft

RIR, and IRFA); input from the HMS Advisory Panel; and the FEIS, RIR and FRFA analyses. In response to public comment on the proposed rule and Draft Amendment 13/DEIS, NMFS made numerous changes from the proposed rule in the final rule. The first change implements a dynamic determination of IBQ shares based upon each individual permitted vessel's fishing effort using the number of pelagic longline sets, relative to the total amount of pelagic longline sets fishery-wide, as the measure of fishing effort. A second change is the authorization of a potential, future set-aside of a *de minimis* amount of bluefin quota for new entrants as part of the IBQ Program. A third change includes a low "Gulf of Mexico" (GOM) designated IBQ share threshold of five percent. A fourth change is the requirement for vessel owners to pay for the cost of boom installation because funds are not available from the Agency. A fifth change is the reallocation of the Purse Seine category quota proportionally to all of the other bluefin categories, including Reserve, Longline, and Trap. A sixth change is the adoption of a slightly different Harpoon category daily retention limit measure than was in the proposed rule. A seventh change is a regulatory clarification: adding to the prohibition section an existing requirement that vessels with pelagic longline gear on board are required to retain and land all dead large medium or giant bluefin. All other proposed measures, as well as the proposed abbreviations for curved fork length, Northeast Distant Area, bluefin tuna, electronic monitoring and individual bluefin tuna program, definitions for "vessel monitoring plan" and "curved fork length", and elimination of the minimum 3-day period between filing a BFT inseason action with the Office of Federal Register and the effective date of the action (50 CFR 635.23(a)(4), (b)(3)) did not change between the proposed and final rules. Measures that are different from the proposed rule are described in detail in the section titled, "Changes from the Proposed Rule."

NMFS has determined that Amendment 13 and its final rule will not have new or different effects on Endangered Species Act (ESA)-listed endangered or threatened

species or designated critical habitat beyond those analyzed in the May 2020 Biological Opinion on the Operation of the Atlantic Highly Migratory Species (HMS) Fisheries Excluding Pelagic Longline and the May 2020 Biological Opinion on the Atlantic HMS Pelagic Longline Fishery. However, in July 2022, NMFSNOAA Fisheries, requested reinitiation of consultation on the effects of the Atlantic HMS pelagic longline fishery due to new information on mortality of giant manta ray that exceeded the mortality anticipated in the 2020 Biological Opinion on that fishery. The anticipated consultation will consider the effects of the 2006 Consolidated HMS FMP and relevant amendments, including Amendment 13, and relevant implementing regulations. Pending completion of consultation, the fishery continues to operate consistent with the Reasonable and Prudent Measures (RPMs) and Terms and Conditions specified in the May 2020 Biological Opinion, and NMFSNOAA Fisheries will continue to monitor any take of giant manta rays in the fishery. Actions within the scope of the May 2020 Biological Opinion and consistent with the RPMs and Terms and Conditions are not likely to jeopardize the species during consultation, consistent with section 7(a)(2) of the ESA. Giant manta ray interactions with the Atlantic HMS pelagic longline fishery are low, with total takes estimated to be well below the levels of takes authorized under the incidental take statement in the 2020 Biological Opinion. In addition, the species is not thought to be in peril in the Atlantic, the level of potential mortalities is considered to be low, and extrapolated mortalities may overstate the fishery's effects on the species. In accordance with section 7(d) of the ESA, NMFS has determined that, during consultation, pelagic longline fishery activity consistent with the existing May 2020 Biological Opinion will not result in an irretrievable or irreversible commitment of resources which would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures and that continued compliance with the RPMs and Terms and

Conditions in that biological opinion will avoid jeopardy to ESA-listed species, consistent with section 7(a)(2) of the ESA.

### **Final Management Measures**

Below is a short description of the final management measures. More information can be found in Final Amendment 13/FEIS.

#### **Pelagic Longline Fishery**

##### *Annual IBQ Share Determination*

NMFS is changing from a static to a dynamic system for determining IBQ shares (expressed as percentages). Annually, using best available data from a recent 36-month period (three years), NMFS will determine IBQ shareholders' shares based upon each permitted, eligible vessel's number of pelagic longline sets legally made, relative to the total amount of pelagic longline sets legally made by all IBQ shareholders' vessels over that same period. For an IBQ shareholder's vessel to be considered "eligible," it must have been issued a valid Atlantic Tunas Longline category limited access permit (LAP) when sets occurred during the relevant 36-month period. Based on public comment, this measure was modified from the proposed rule, which would have used landings of designated species and four percentile (tiers) for establishing IBQ shares. As described in § 635.15(c), best available data as determined by NMFS may include vessel monitoring system (VMS) reports, and may also include logbook, electronic monitoring (EM), or permit data. NMFS will only count one pelagic longline set per day, in order to discourage deployment of short sets for the purpose of influencing IBQ share determinations. Vessels may deploy as many sets per day as they wish, but only one set per day would count toward the IBQ share determination. After determining IBQ shares, NMFS will distribute IBQ allocations, but only to IBQ shareholders that have vessels with current, valid permits at the time of the annual distribution of IBQ allocation.

Under this measure, during the last quarter of each year, NMFS will notify Atlantic Tunas Longline permit holders via electronic methods (such as email) and/or letter to inform them of their IBQ shares, their IBQ allocations, and the regional designations of those shares and allocations for the subsequent fishing year; whether adjustments were made to GOM-designated shares due to the GOM shares cap; and whether the low GOM-designated share threshold has been triggered. This notification will represent the initial administrative determination (IAD) of the permit holder's IBQ share and allocation. An Atlantic Tunas Longline category permit holder may submit a written petition of appeal of the following aspects of the IAD: 1) eligibility for quota shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit; 2) IBQ share percentage; and 3) IBQ allocations. A permit holder may also appeal NMFS' determination of the number of pelagic longline sets legally made by its permitted vessel. However, an adjustment of GOM shares (§ 635.15(c)(3)(ii)) or inseason quota adjustment (§ 635.15(e)(3)) is not subject to appeal. Appeals must be filed with the National Appeals Office (NAO) within 45 days after the date the IAD is issued, and will be governed by NAO rules of procedures at 15 CFR part 906.

Appeals based on permit history would be based on NMFS permit records. NMFS will only use the relevant 36 months of data described in § 635.15(c) to determine the numbers of pelagic longline sets made. No other proof of sets or permit history will be considered. Copies of written documents will be acceptable; NMFS may request the originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation. Appeals based on hardship factors will not be considered. Consistent with most limited effort and catch share programs, hardship will not be a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize some bluefin quota from the Reserve



category to accommodate permitted vessels that are deemed eligible for shares through the appeals process, to provide a permitted vessel an increased quota share.

As described in Amendment 13, this measure provides separate consideration to participants in the Deepwater Horizon Oceanic Fish Restoration Project (OFRP) as appropriate. The Deepwater Horizon OFRP is a program conducted as a partnership between NMFS, the National Fish and Wildlife Foundation, and pelagic longline fishermen to restore damage caused by the Deepwater Horizon oil spill. The OFRP program began after Amendment 7, and was therefore not a consideration in the determination of IBQ shares in Amendment 7. More information about the Deepwater Horizon OFRP may be found at <https://www.nfwf.org/programs/deepwater-horizon-oceanic-fish-restoration-project>.

Based on public comment, Amendment 13 also adds to the framework provisions of the 2006 Consolidated HMS FMP the authority to set aside a *de minimis* amount of bluefin quota from the Longline category quota prior to calculating the annual IBQ allocations (based on the annual share determinations described above), and the final rule makes a parallel edit to 50 CFR 635.34(b) (framework procedures). NMFS is not implementing a set aside through the final rule, thus at this time, the provision will have no effect on the amount of Longline quota allocated to Longline category vessels. As needed, NMFS would conduct future rulemaking and associated analyses to set the precise amount of set aside, and the requirements, process, and conditions associated with distributing IBQ allocation to new entrants.

#### *Regional Designations of IBQ Shares*

In conjunction with the dynamic IBQ share and allocation measures, this final rule also modifies the regional Gulf of Mexico and Atlantic designations, while maintaining a cap on allowable bluefin catch from the Gulf of Mexico. Currently, IBQ shares and resultant allocations are designated as either GOM or “Atlantic” (ATL) based

on the geographic location of sets used in the determination of those shares and allocations. Existing regulations provide that only GOM IBQ allocation may be used to account for bluefin incidentally caught in the Gulf of Mexico, while either ATL or GOM IBQ allocation may be used to account for bluefin in the Atlantic. Per Amendment 7, 35 percent of the total Longline category quota is designated as GOM, and 65 percent designated as ATL. This final rule continues to cap the amount of quota that can be designated as GOM at 35 percent and retain the accounting rules for regional IBQ allocations, but as explained below, provides for authority to reduce the 35-percent GOM cap, annual adjustment of regional designations, and a low GOM designated shares threshold. Under these regulations, if a vessel does not receive GOM designated IBQ shares and resulting allocation (because the vessel had no pelagic longline sets in the Gulf of Mexico during the relevant 36 month period), but wishes to fish in the Gulf of Mexico, they would need to lease GOM designated IBQ allocation initially. If the vessel fished in the Gulf of Mexico (using leased GOM IBQ allocation) it would subsequently be eligible for GOM designated IBQ shares (and allocation) the following year based on the number of sets fished in the Gulf of Mexico.

The final rule includes a regulatory mechanism for reducing the 35-percent default GOM cap, as needed to achieve conservation and management objectives. A determination to lower the cap would be based upon consideration of the existing determination criteria used in making inseason or annual adjustments to quota, which include a wide range of considerations including consistency with the FMP objectives (§ 635.27(a)(8)). A cap reduction may be for all of a calendar year, or a portion of it, as appropriate. NMFS would notify the public of changes to the 35-percent default cap and publish any modification to the cap in the **Federal Register**.

Annually, NMFS will determine the total amount of IBQ shares and resultant allocations for each region based on the geographic location of sets used in the

determination of those shares and allocations. NMFS will use the relevant 36 months of best available data described above under *Annual IBQ Share Determination*. GOM-designated shares thus could be less than the default 35-percent GOM share cap. If NMFS calculates that the amount of GOM designated IBQ shares (based on sets) will be greater than the GOM share cap (*i.e.*, 35 percent (or lower if adjusted)), NMFS will reduce the GOM designated IBQ shares to equal the GOM share cap in effect. The reduction in total GOM share percentage would be achieved through equal proportional reductions among IBQ shareholders with GOM designated IBQ shares across the four share percentages. The ATL shares would be increased in an analogous manner, so that the total share percentages add up to 100 percent. NMFS will notify affected permit holders of any reductions in their IBQ share percentage resulting from this adjustment. This adjustment would not be subject to appeal, because it is not a determination based on the data associated with an individual shareholder, but based upon the need to reduce the total amount of IBQ shares across all shareholders, consistent with the applicable GOM share cap.

Another change since the proposed rule is the addition of a low GOM designated share threshold, in response to a concern that potential, future declines in effort in the Gulf of Mexico could result in a very low percentage of GOM-designated shares in some years and severely limit operation of the fishery. *See* comment 8 summary under Response to Comments below. NMFS agrees that such a situation could result in poor functioning or disruption of the IBQ Program, result in further declines in fishing effort or participation in the fishery, or prevent utilization of available IBQ allocation. *See* response to comment 8 below. In response, the final rule provides: if the total amount of GOM-designated IBQ shares is 5 percent or less of the total IBQ shares (ATL plus GOM shares), NMFS will file an action with the Office of Federal Register for publication that suspends for that year the requirements to account for bluefin caught in the Gulf of

Mexico with GOM IBQ shares and resultant allocations and to use GOM IBQ allocation to satisfy the minimum GOM IBQ allocation requirement. The maximum allowable bluefin catch from the Gulf of Mexico will be the weight of bluefin associated with the cap on GOM designated shares (*i.e.*, the default level of 35 percent, or lower if modified). If this level of catch were reached or projected to be reached, NMFS would prohibit vessels from fishing with pelagic longline gear in the Gulf of Mexico for the remainder of that year. When determining the percentage of IBQ shares, NMFS will use the relevant 36 months of best available data described above under *Annual IBQ Share Determination*. If this threshold is triggered, any vessels fishing in the Gulf of Mexico would still need to account for bluefin catch (landings or dead discards) and have the minimum IBQ allocation of 0.25 mt ww (551 lb ww) before departing on the first fishing trip in a calendar year quarter. However, they may use either GOM or ATL shares and resultant allocations, received through the dynamic allocation process or leasing. NMFS will notify vessel owners if the threshold is triggered when NMFS notifies them of their annual IBQ shares and allocations.

#### *Cap on IBQ Shares Held or Acquired*

This final rule caps the percentage of IBQ shares that an entity may hold or acquire at 25 percent of the total IBQ shares and the corresponding amount of IBQ allocation associated with the IBQ shares. The 25-percent cap applies whether the shares were accrued by an entity through the ownership of multiple Atlantic Tunas Longline permits and/or high fishing effort. The cap will apply to the sum of shares or IBQ allocations an entity controls, whether the entity is associated with a single or multiple Atlantic Tunas longline permits. The cap is not intended to restrict the use of IBQ allocation to account for bluefin catch or leasing of IBQ allocation. NMFS will implement this restriction based on the best available information such as data submitted in support of permit and IBQ Program requirements.

### *IBQ Program Dealer Reporting Requirements*

This final rule modifies two aspects of the dealer reporting requirements for the IBQ Program. First, this measure will eliminate the reporting of bluefin dead discard information by the dealer. The dealer will continue to be required to enter the data on bluefin landings into the Catch Shares On-line System via the dealer account.

Second, this measure will eliminate the current requirement that vessel operators/owners confirm the landing information entered into the Catch Shares On-line System by the dealer is accurate by entering the personal identification number (PIN) associated with the vessel account. This measure will be combined with a new email notification by NMFS via the Catch Shares On-line System (or a message within the System) that will inform the vessel owner when a dealer conducts a bluefin landings transaction with that vessel's IBQ account. This notification will provide a means of vessel owner oversight of dealer transactions with their IBQ vessel account.

### *Measures Related to Electronic Monitoring (EM)*

This final rule requires that the vessel operator mail the electronic monitoring system's hard drive(s) within 48 hours after the completion of every other trip (every second trip), instead of after each pelagic longline fishing trip. An exception to this requirement is that if the hard drive is at capacity (full) after one trip, as indicated by the EM system, the vessel operator must mail the hard drive at the end of that trip. And, vessel operators must ensure that hard drives have the capacity to record the full trip before departing on a trip.

This final rule clarifies and expands the regulations to require installation of semi-permanent hardware, if necessary, to mount and install video cameras at locations on vessels to obtain optimal views. NMFS or its designees, working in conjunction with the vessel owner/operator, may require relatively minor modifications to the vessel structure to mount cameras in locations that provide views required under existing regulations of

the vessel and adjacent areas (50 CFR 635.9(c)). In some cases, NMFS or its designees may require the installation of the rail camera in a particular location on the vessel's structure, or installation of hardware such as a boom on a structure near the vessel's rail for the purpose of obtaining a different camera angle with the side of the vessel to optimize the view of the area of the water surface and seaward of the rail, down to the water surface, where the gear and fish are hauled out of the water. A boom will likely be a customized piece of hardware that is fixed or movable (*e.g.*, extended or lowered prior to fishing activities starting). The details of any camera installation requirement or protocols will be recorded in the vessel's Vessel Monitoring Plan.

The cost associated with the installation of booms would be paid by vessel owners (approximately \$1,000 or less). The Draft Amendment 13/DEIS stated that NMFS would pay the costs of boom installation, as funds are available. In the Final Amendment 13/FEIS, NMFS analyzed the impacts and determined that boom installation should be paid for by individual vessel owners, given that appropriated funds are not available for this purpose. This approach to industry-funded implementation is consistent with NMFS Service Procedure 04-115-02: Cost Allocation in Electronic Monitoring Programs for Federally Managed U.S. Fisheries, which generally specifies the transition of certain costs to the fishing industry.

The third change made to the electronic monitoring program by this final rule is a requirement for specific fish handling procedures and the installation/placement of a measuring grid on deck, in view of one of the cameras. As instructed and specified by NMFS, the vessel crew will be required to place retained fish on a mat or carpet with grid lines or a grid painted on deck in view of the processing camera, so the video recording included images of the fish on the grid. The grid may be customized to an individual vessel while also having lines of standard intervals. The specifications of the measuring grid will be provided in each individual vessel's Vessel Monitoring Plan (VMP). During

the year following the effective date of this rule, NMFS or the NMFS-approved contractor will work with the vessel owner of each vessel to update the VMP. Once the VMP is approved and signed by NMFS or the NMFS-approved contractor, the vessel owner will have six months to install the measuring grid as specified in the VMP. The flexibility of the timing of the full implementation of this measure will provide time for NMFS and the NMFS-approved contractor to complete more detailed standardized specifications and the printing of measuring mats/carpets or customized painting.

#### *Cost Recovery Program*

The Magnuson-Stevens Act provides NMFS the authority for recovering fees paid by limited access privilege holders of up to three percent of the ex-vessel value of fish harvested under the limited access privilege program to cover the incremental costs (incurred by NMFS) directly related to and in support of management, data collection and analysis, and enforcement activities for the program (*e.g.*, the IBQ Program). This final rule implements a flexible cost recovery program. No fees will be charged if the costs of collecting the fees exceed estimated fees to be recovered. Annually, NMFS will estimate its incremental costs associated with the IBQ Program (including costs associated with administering the cost recovery program) and the total ex-vessel value of bluefin sold from the pelagic longline fishery (including bluefin caught with green-stick gear). NMFS will notify the public whether a cost recovery fee will be charged for the year. If NMFS determines the annual cost recovery fee is warranted, NMFS will notify the permit holders that landed bluefin under the IBQ Program, including those caught with green-stick gear (based on dealer landings data), of any fees to be charged. Permit holders will be billed based on the ex-vessel value of the bluefin sold. Permit holders would pay the cost recovery fee through the Catch Shares On-line System website and the associated *pay.gov* link.

#### **Modification of Bluefin Quota Category Allocation Percentages**

This final rule changes the mathematical method used in the annual quota allocation process to achieve a similar result through simpler means. Under current regulations, each quota category (including the Longline category) is annually allocated a percentage of the U.S. bluefin quota after 68 mt (*i.e.*, the historical 68-mt dead discard allowance, as described in Amendment 7) is subtracted from the baseline quota and allocated to the Longline category. This process was intended to have all bluefin quota categories contribute proportionally to the 68 mt provided to the Longline category annually. This final rule replaces the two-step process of subtracting the 68 mt from the U.S. baseline quota and then applying the category percentages, with a one-step process applying slightly revised category allocation percentages.

### **Purse Seine Category**

This final rule discontinues the Purse Seine category and redistributes Purse Seine category quota. NMFS is removing purse seine from the list of authorized gears and removing other references in the regulations to the purse seine fishery, including references to Purse Seine category quota, permits, nets, sets, vessels, and participants. In the proposed rule, the Longline and Trap categories were not reallocated any Purse Seine quota. Based on public comment and a refined analysis, NMFS determined that these incidental quota categories should be reallocated Purse Seine quota. See response to comment 22 under Response to Comments (including Longline category in reallocation due to change in IBQ leasing market as a result of discontinuation of Purse Seine category and also including Trap category). As such, the Purse Seine category quota (18.6 percent of the total U.S. baseline bluefin quota, under current regulations) will be reallocated proportionally to all of the other bluefin quota categories (General, Angling, Harpoon, Longline, Trap, and the Reserve) (Table 1). The quota allocations associated with the revised percentages will be based on the bluefin quota implemented June 1, 2022 (87 FR 33049).



**Table 1-Bluefin Quota Categories, Current and Amendment 13 Percentages, and 2023 Allocations (mt)**

Bluefin Quota Category	Current Percentage	Amendment 13 Percentage	2023 Allocations (mt)
General	47.1	54	710.7
Angling	19.7	22.6	297.4
Harpoon	3.9	4.5	59.2
Longline	8.1	15.9	209.3
Trap	0.1	0.1	1.3
Reserve	2.5	2.9	38.2
Total U.S. Baseline Quota			1,316.14

Table 2 shows the subquotas for the General and Angling categories for 2023 based on this final rule and bluefin quota rule (87 FR 33049, June 1, 2022).

**Table 2-Bluefin Subquotas for the General and Angling Categories for 2023**

Category	Subquotas			
General*		710.7		
	January-March		37.7	
	June-August		355.4	
	September		188.3	
	October-November		92.4	
	December		37.0	
Angling		297.4		
	School	134.1		
			Reserve	24.8
			North of 39° 18' N. lat.	51.6
			South of 39° 18' N. lat.	57.7
	Large School/Small Medium	154.1		
			North of 39° 18' N. lat.	72.7
			South of 39° 18' N. lat.	81.4
	Trophy	9.2		
			Gulf of Maine Trophy Area	2.3
			Southern New England	2.3
			Trophy South	2.3
			Gulf of Mexico	2.3

\*Due to rounding, the sum of the General category sub-quota period values do not equal 710.7

### **Angling Category**

This final rule modifies the current Angling category Trophy North subquota areas and allocations specified at 50 CFR 635.27(a)(1), by dividing the northern area into two zones: north and south of 42° N. lat. (off Chatham, MA). These newly-formed areas are named the Gulf of Maine trophy area and the Southern New England trophy area, respectively. The net result is that the Trophy quota is divided among four geographic areas (in the Atlantic and Gulf of Mexico) and each area will receive an equal amount of quota (*i.e.*, the Angling category Trophy quota would be divided equally four ways).

To create the new trophy suballocation for the Gulf of Maine trophy area, NMFS is increasing the allocation for trophy bluefin. Because the amount of school bluefin (27" - < 47") is limited in the codified regulations, and in compliance with the ICCAT bluefin recommendation to limit take to no more than 10 percent of the annual U.S. bluefin quota, any increase to the trophy subquota will need to be balanced with an equivalent reduction of the subquota for large school/small medium bluefin subquota (47" - < 73"), which is the remainder of the Angling category quota once the school bluefin subquota and trophy subquotas are subtracted. For example, referring to the current Angling category quota regulations, NMFS will increase the portion of the Angling category quota allocated for trophy bluefin from 2.3 percent to 3.1 percent. This results in a minor decrease in the amount of allocation for large school/small medium bluefin (measuring 47 - < 73"). Creation of a Gulf of Maine area and an allocation equivalent to the allocations for the existing areas will provide additional opportunities for anglers fishing north of 42° N. lat. where bluefin are available in summer and fall, including those fishing on HMS Charter/Headboat-permitted vessels. In recent years the northern trophy area has closed between late May and early August, with the quota largely filled with bluefin caught off the states of New York and New Jersey, south of 42° N. lat.

### **Harpoon Category**

This final rule implements a default overall Harpoon category daily retention limit of 10 commercial-sized bluefin per day or trip (*i.e.*, the combined limit of large medium (73" - < 81") and giant (81" or greater) would be 10 fish). In addition, this final rule allows NMFS to adjust the combined daily retention limit between 5 to 10 fish, based on consideration of the determination criteria at 50 CFR 635.27(a)(8), in order to avoid closing the fishery. This final rule maintains the current regulations regarding retention of large medium bluefin (73" - < 81") (*i.e.*, the range of two (default) to four fish, adjustable through inseason action). For example, if the combined limit were 10 fish, and 2 large medium fish were retained, then the number of allowable giant bluefin would be 8.

#### **Permit Category Change Restrictions**

This final rule allows Atlantic Tunas permit holders in the General, Harpoon, or Trap category, or Atlantic HMS permit holders in the Angling or Charter/Headboat category, to change permit categories any time during the fishing year, provided the vessel has not landed a bluefin.

#### **Green-stick Gear by Pelagic Longline Vessels**

This final rule clarifies retention and reporting requirements for bluefin caught with green-stick gear by vessels with valid Atlantic Tunas Longline category permits. Such a vessel is allowed the retention of one bluefin per trip (73" or greater CFL) taken incidentally by green-stick gear while fishing for other target species. Vessels are required to submit a VMS set report for each green-stick retrieval that interacts with bluefin and report information on the location of the set and numbers and length of bluefin within 12 hours (in addition to the VMS reports for pelagic longline sets). This VMS requirement differs from the VMS requirement associated with the use of pelagic longline gear, which requires submission of a report after each pelagic longline set. Regardless of whether sets are made with green-stick gear or pelagic longline gear, vessels are required to comply with HMS logbook requirements and comply with the

IBQ Program requirements regarding accounting for bluefin using IBQ allocation, quarterly accountability, and other applicable regulations. The use of EM Systems is not required for haulback with green-stick gear or to record an image of a bluefin caught with green-stick gear. This measure supports the minimization of dead discards by allowing the incidental retention of one green-stick caught bluefin per trip (73" or greater CFL).

### **Other Regulatory Changes**

As described below and in the proposed rule, Amendment 13 implements other regulatory changes that will improve the administration and enforcement of HMS regulations and that will not have any environmental, economic or social impacts. The corrections, clarifications, changes in definitions, and modifications to remove obsolete cross-references are consistent with the intent of previously analyzed and approved management measures.

Under 50 CFR 635.2, Definitions, abbreviations were added for curved fork length, northeast distant area, bluefin tuna, electronic monitoring and Individual bluefin tuna program. A definition for vessel monitoring plan is added, and the definition of curved fork length is clarified.

Under 50 CFR 635.23(a)(4) and (b)(3), which address the process for inseason changes to the bluefin retention limits, the minimum 3-day period between filing an action with the Office of Federal Register and the effective date of the action is eliminated to provide for additional flexibility, as warranted and supported. The 3-day period has been in regulations since at least 1999. This rule removes that minimum period to provide for greater flexibility in management response for the General category. The General category is very dynamic: fish may swim from Massachusetts to Virginia in three days, there is limited quota and seasonal allocations, and there are high and variable levels of fishing pressure. Given all of this, NMFS may need flexibility to more swiftly implement an inseason action that may provide additional opportunity (in the case of an

increased trip limit), or one to slow a catch rate (in the case of a lowered retention limit). NMFS will continue to consider each adjustment on a fact-specific basis, consistent with Administrative Procedure Act requirements and providing for as much notice as possible.

Under 50 CFR 635.27, the subquota period previously referred to as the “January” subquota period will be changed to “January through March” subquota period to reflect the actual duration of the January subquota period, which is not changing.

### **Response to Comments**

NMFS received 47 written comments from individual members of the public, and a variety of entities including industry associations, environmental organizations, and states. All written comments can be found at <http://regulations.gov/> by searching for “0648-BI08”. NMFS also received comments during the webinars and HMS AP meetings. Responses to those comments are below. Comments are organized according to subject.

### **‘A’ Alternatives: Modifications to Individual Bluefin Quota (IBQ) Share Eligibility, Distribution and Allocation Methods**

#### *Comment 1:*

NMFS received many comments supporting the preferred alternative of replacing the current system of 136 shareholders with a dynamic system where, annually, permit holders of active vessels would be defined as shareholders. Pelagic longline industry groups that represent pelagic longline vessels supported dynamic allocation, but had different opinions on whether pelagic longline sets or designated species landings should be the basis for IBQ shares. One commenter stated that the current shareholder system in place was punitive in that it provided more bluefin to vessels that had no interactions with bluefin and did not need bluefin quota. One commenter supported a dynamic system of determining shares, but was in favor of distributing IBQ shares and their associated allocations in equal amounts to active vessels.

*Response:*

NMFS agrees that a dynamic determination of active shareholders will improve the distribution of shares among Atlantic Tunas Longline permit holders by more effectively putting shares where allocation is likely to be used. NMFS also agrees that the current share system may be overly restrictive, and the distribution of allocations may not be aligned with the need for quota. Allocating catch shares based on historical catch, which is typical of many catch share programs, may have disadvantages or limited relevance when implemented in the context of a catch share program for incidentally caught species such as bluefin. In contrast, a dynamic share determination, which adapts to changes in fishery participation over time, will better align shares with the need for IBQ allocation, will be perceived as fair, and will continue to provide incentives to reduce incidental catch of bluefin. The relatively small amount of IBQ allocation that shareholders will be distributed and the requirement that all bluefin landings and dead discards be accounted for using IBQ allocation, will continue to provide strong incentives for vessels to modify their fishing behavior to avoid and reduce interactions with bluefin. Based in part on public comment, NMFS has determined that a dynamic determination of shares based on sets would address the objective of providing shares only to vessels that have recently fished. NMFS' response to comments regarding the elements and details of a dynamic system are contained in the responses to comments 2 through 5.

*Comment 2:*

Some commenters supported the use of designated species landings in general, but wanted to include dolphinfish (dolphin) as one of the species that count toward IBQ share determination, because of the importance of dolphin revenue, especially during May. Other commenters noted the exclusion of dolphin as one of the various reasons they did not support the use of designated species landings as the relevant metric upon which to base IBQ shares. They also commented that any species landed by the fleet should be

considered as a designated species in the method of share determination. For example it was noted that traditionally, shortfin mako sharks have been a target species and therefore the landings should be credited to fishermen. Some commenters noted the importance of all species landed to the economic viability of the fishery, given the variable nature of species available to the fishery.

*Response:*

NMFS agrees that dolphin is an economically important component of pelagic longline fishery landings, especially during certain time periods. NMFS did not propose inclusion of dolphin in the list of designated species (for the purpose of share determination) because dolphin comprises a relatively low portion of the total pelagic longline landings. Additionally, because of differences in management and data reporting due to the fact that dolphin is not managed under the 2006 Consolidated HMS FMP, it would be difficult for NMFS to compile and analyze the dolphin data annually in an accurate and timely manner. As explained further in the response to comment 3, NMFS is no longer preferring basing shares on designated species landings. In defining designated species, NMFS intended to create a standardized list of a limited number of target species that would be used as a metric of fishing effort in the annual determination of IBQ shares, and as such the availability and timeliness of data was a relevant factor. NMFS agrees that the pelagic longline fishery is a fishery that relies on many species for its revenue, due to the diversity of the fleet and the dynamic, migratory nature of the species it lands.

*Comment 3:*

NMFS received a number of comments regarding the best method of determining shares (*i.e.*, based on hooks, sets, landing, or equal shares). An organization representing pelagic longline businesses stated that determining IBQ shares using designated species landings would incentivize vessels to retain smaller fish or juvenile fish, which they

currently release, to enhance the total weight of landings. Vessels would be incentivized to land all swordfish or tunas that come to the vessel, rather than releasing lower quality fish or lower value small fish. Further they stated that landings are not a standardized metric due to differences among pelagic longline vessels in fishing strategy and skill level, and due to landings being driven by prices and dealer demands. A different organization representing pelagic longline businesses supported using designated species landings as reasonable because of the logical relationship between fishing effort, amount of landings and need for IBQ allocation. One commenter stated that basing shares on landings is not fair because vessels have varied capacities for holding fish. NMFS received multiple comments stating that NMFS should prefer dynamic determination of IBQ shares based on pelagic longline sets because sets are a more reliable measure of the need for IBQ shares. Some commenters supported the use of sets, but suggested that only one set per day be allowed to count toward the determination of shares, because vessels might set multiple sets per day for the sole purpose of influencing their IBQ share percentage. Two commenters stated that hooks are harder to verify than sets. One commenter supported dividing up shares equally among active vessels. NMFS received multiple comments that the method used to determine IBQ shares is not a conservation issue and that NMFS should follow the industry's recommendations for efficient IBQ share distribution.

*Response:*

NMFS acknowledges that each of the methods analyzed for determining IBQ shares annually (hooks, sets, landings, or equal shares) has strengths and weaknesses. Given the diversity of the fleet and the highly variable and migratory nature of bluefin, it is difficult to precisely align the distribution of IBQ shares among vessels with the need for IBQ shares. Although a commenter supported the use of equal shares as a method of distributing shares among active vessels, most commenters supported basing shares on a



metric that reflects fishing effort. NMFS agrees with using fishing effort as the basis for determining IBQ shares, given that bluefin is an incidentally caught species, and there is a relationship between the amount of fishing effort and the number of bluefin a vessel is likely to encounter (and the need to account for bluefin using IBQ allocation). While NMFS proposed using designated species landings to determine IBQ shares, in this final rule NMFS is implementing regulations to determine IBQ shares based on the number of pelagic longline sets. The pelagic longline fleet is geographically diverse and includes a range of vessel sizes and fishing strategies. Using a metric of one set (a single deployment and retrieval of pelagic longline gear) per day provides a standardized, uniform method of determining IBQ shares and addresses the concern that a vessel operator might deploy speculative, short sets for the purpose of inflating the IBQ share determination. NMFS can determine the number of sets annually, in a timely manner, using a single data source (VMS or logbooks) and, if necessary, verify the accuracy of the reported data using EM data. A majority of active shareholders would have a larger share percentage under dynamic determination of shares based on sets than they would under the current system (No Action). In selecting the final preferred alternative, NMFS took into consideration public comments, which included different industry recommendations on the method to be applied; how the method of share distribution will influence various aspects of the IBQ Program, such as the IBQ allocation leasing market, vessel incentives to avoid bluefin, and the ability for vessels to account for bluefin catch; and ecological, economic and social impacts. NMFS believes that the preferred alternative is reasonably calculated to promote conservation, because it encourages a rational, well-managed use of fishery resources through a reasonable a balanced allocation approach.

*Comment 4:*

NMFS received multiple comments that quartiles or tiers should not be used to determine IBQ shares, and instead custom IBQ share percentages should be given based on vessel fishing effort. As proposed, some shareholders would have shares that are either larger or smaller than the shares percentage corresponding directly to the number of sets. Commenters stated that due to the differences in the share percentage between adjacent tiers, vessel operators may increase fishing effort for the sole reason of subsequently being put in the next higher tier and increasing their share percentage. They stated that a small amount of additional effort can have a disproportionate impact on the IBQ share a vessel receives, since moving from one quartile to the next higher quartile (tier) results in a large increase in IBQ allocation received (in lb). Commenters also stated that the quartile system is unnecessarily complex. NMFS received comments in support of providing each active vessel at least a minimum amount of IBQ share that would allow them to depart on a fishing trip.

*Response:*

NMFS agrees that tiers based on quartiles (which was proposed), should not be included in the share determination methods for the reasons noted by the commenters, and will instead implement ‘customized’ shares based on the number of pelagic longline sets in proportion to the total number of sets fleet-wide. Basically, this eliminates a step in the process and shares would correspond more directly to effort. Although NMFS proposed using tiers in order to eliminate shares with either a very high or very low percentage, NMFS agrees that ‘customized’ shares are simpler and more equitable than the use of tiers. Using customized shares, no shareholder would receive a share larger or smaller than that which corresponds directly to the number of sets made by the vessel (during the relevant three-year period). NMFS disagrees that each active vessel should receive a minimum percentage that would allow them to depart on a fishing trip. Under the current regulations, before departing on the first fishing trip in a calendar year

quarter, a vessel with an eligible Atlantic Tunas Longline category permit that fishes with or has pelagic longline gear onboard must have the minimum IBQ allocation for either the Gulf of Mexico or Atlantic, depending on fishing location. Under a customized share determination method, vessels with a low number of sets may receive a share percentage that results in an IBQ allocation of less than the minimum IBQ allocation required to depart on a fishing trip. While understanding the logic of the commenter's suggestions to implement a minimum share, NMFS disagrees that it is warranted because it would complicate the determination of shares and would be inconsistent with the reasons for implementing customized shares. Adjustment of the lowest shares upward would erode the equitable nature of customized share determination. The shares that are adjusted upward would no longer represent the vessels' number of sets and all of the other shares would need to be adjusted downward slightly to derive the shares used to increase the size of the smallest shares. Vessels that receive a share that is smaller than the minimum IBQ allocation required can lease additional allocation in order to fish.

*Comment 5:*

NMFS received a comment that the location and time of year of fishing activity should be taken into account when determining IBQ shares. The commenter stated that some fishing locations and times are not associated with interacting with bluefin, for example, in the Carolinas during August and September or in the Caribbean throughout the year. Two commenters supported maintaining the current regulations that include any data associated with fishing in the northeast distant gear restricted area (NED) as part of formulas that determine IBQ shares, and maintaining the current IBQ catch accounting rules for fishing in the NED. One commenter did not support inclusion of trips in the NED, but suggested instead a complex system of rules for how such trips would factor into the determination of IBQ shares. Another commenter suggested that NMFS analyze

the impact of dynamic determination of IBQ shares based upon designated species landings as the measure of fishing effort on leasing of IBQ allocation.

*Response:*

NMFS disagrees that the location and time of year of fishing activity should be taken into account when determining IBQ shares. Although the abundance and distribution of bluefin are associated with particular geographic regions and seasons, taking into account patterns of bluefin availability would increase the complexity of the share determination, and may not result in a distribution of shares among vessels that aligns with the need for bluefin allocation. The pelagic longline fishery is dynamic, mobile, and adaptive, with some vessels opportunistically targeting multiple species over wide geographic areas. Inclusion of all fishing activity as the basis of allocation formulas increases fishing opportunity and flexibility for vessels to fish in multiple areas, as conditions warrant. The NED fishery is an intermittent fishery with only a few participating vessels and does not warrant the development of different allocation rules. NED accounting rules take into account the fact that a binding ICCAT recommendation specifies a separate 25-mt bluefin quota to account for bycatch from the NED. Exclusion of NED fishing activity from data used to determine shares may affect profitability of vessel operations or incentives to fish in the NED, and affect fishing for target species. Unless clearly warranted, constraints on fishing for target species are not desirable. Under current regulations, any pelagic longline vessel may fish in the NED. NMFS analyzed the impacts of dynamic determination of IBQ shares and concluded it would enhance the continued success of the IBQ allocation leasing program by the distribution of shares to active vessels. All active vessels would receive IBQ allocation, and the leasing market is likely to continue to function well, with a price similar to or lower than recent prices, because most vessel allocations would increase. Sixty-one of the

91 active vessels would have larger IBQ allocations than they would under the current static determination of IBQ shares.

*Comment 6:*

NMFS received multiple comments expressing concern that the preferred alternative for determining IBQ shares would not facilitate new entrants joining the pelagic longline fishery, as it would be difficult for new entrants to lease IBQ allocation from active vessels and to increase that amount of IBQ share over time.

*Response:*

NMFS has concluded that the determination of IBQ shares based on vessel sets will enhance the continued success of the IBQ allocation leasing market, and therefore IBQ allocation will be available to new entrants to the fishery that do not have IBQ shares at the time of entry into the fishery. Under dynamic share determination, a new entrant to the fishery would need to lease IBQ allocation during the first year of their participation in the pelagic longline fishery. During the second year of participation, the vessel's share percentage would be based on the number of pelagic longline sets relative to the total fishery (during the previous three years). Since 2015 there have been participants in the fishery that were not shareholders, who have relied on leased IBQ allocations from shareholders in order to fish and account for bluefin catch. In light of public comment though, this final rule adds to the framework provisions of the 2006 Consolidated HMS FMP the authority to set aside a *de minimis* amount of bluefin quota for new entrants. Neither the Amendment 13 DEIS nor the FEIS analyzes a full set-aside program. This final rule simply provides for the potential development of such a program in the future, if necessary, should the dynamic allocation provisions finalized in this action not facilitate new entrants. In that case, NMFS would conduct rulemaking to set the precise amount of set-aside, and the requirements, process, and conditions associated with distributing IBQ allocation to new entrants.

## **‘B’ Alternatives: Modifications to Rules Closely Linked to IBQ Allocations**

### *Comment 7:*

NMFS received comments in support of the preferred alternative to determine regional designations of IBQ shares and allocations on an annual basis as part of the annual dynamic allocation process. They indicated that the preferred alternative would allow more flexibility for vessels to fish in the Gulf of Mexico without needing to lease GOM IBQ allocation. The need to lease IBQ allocation was particularly frustrating when vessels had to lease from vessels that were not actively fishing, but simply leasing their IBQ allocation to active vessels.

### *Response:*

NMFS agrees that the preferred alternative, which modifies the regional designations so that they are dynamic, would provide additional flexibility for vessels that are interested in fishing in the Gulf of Mexico. A vessel without any GOM IBQ shares during a particular year would need to lease GOM IBQ allocation to fish in the Gulf of Mexico that year, but in the subsequent year, in the context of the dynamic determination of IBQ shares, the vessels would have GOM IBQ shares in proportion to the number of pelagic longline sets in the Gulf of Mexico.

### *Comment 8:*

NMFS received a number of comments that did not support the preferred alternative to determine regional designations of IBQ shares and allocations on an annual basis as part of the annual dynamic allocation process. One commenter instead supported Alternative B2, which would remove regional designations altogether but retain the catch cap. Another commenter stated that the regional designations are an unnecessary barrier, an unjustified cost, and an impediment to attaining optimum yield in the fishery. Further, they stated that the preferred alternative did not provide a reasonable opportunity to catch the quota. A commenter stated that constraints in the Gulf of Mexico are not needed

because the IBQ Program constrains the impacts of the fishery on bluefin. One commenter was concerned that, in the context of dynamic shares and regional designations, the potential for declining effort in the Gulf of Mexico could result in a low percentage of GOM IBQ shares that could severely limit the operation of the fishery. For example, a reduction in either the number of vessels fishing in the Gulf of Mexico, or reduction in the amount of fishing effort per vessel (or both) would result in a reduction in the amount of GOM designated shares (and IBQ allocation).

*Response:*

NMFS disagrees that the preferred alternative for regional designations would represent an unwarranted barrier or cost to fishing, or that IBQ Program constraints for the Gulf of Mexico are unnecessary. The regional designation rules provide a balance between the need to cap bluefin catch in the Gulf of Mexico, provide equitable fishing opportunities, and modulate pelagic longline fishing effort in the Gulf of Mexico. The Amendment 7 IBQ Program rules as modified by Amendment 13 are intended to address the fact that the Gulf of Mexico is the recognized spawning ground for western Atlantic bluefin tuna. Under this Amendment 13 final rule, a vessel without GOM designated IBQ shares, but fishing in the Gulf of Mexico would be required to lease GOM IBQ allocation during the first year of fishing in the Gulf of Mexico. However, in the following year the vessel would have GOM designated IBQ shares in proportion to the number of pelagic longline sets in the Gulf of Mexico. Over time, a vessel with increasing levels of fishing effort in the Gulf of Mexico would receive an increasing percentage of GOM designated IBQ shares. This method is a reasonable means of providing opportunities to fish in the Gulf of Mexico, while supporting the objectives of the regional designations. NMFS agrees that under dynamic determination of shares and regional designations, there could be a situation of reduced fishing effort and low GOM designated shares. Under conditions of low GOM shares and allocation, vessels with GOM IBQ shares may be

reluctant to lease IBQ allocation to others. If unable to lease GOM IBQ allocation, prospective new entrants to the fishery (without any shares), or vessels with only Atlantic (ATL) designated shares, would be unable to meet the minimum IBQ allocation requirement, and thus be unable to fish in the Gulf of Mexico. Similarly, vessels with GOM designated IBQ shares may be unable to account for bluefin catch. Such serious constraints could result in poor function or disruption of the IBQ Program, and result in further declines in fishing effort or participation in the pelagic longline fishery, or prevent increases in fishing effort or participation. To address this, this final rule includes a GOM designated share percentage threshold. If the total amount of IBQ shares designated as GOM is five percent or less of the total IBQ allocations (ATL plus GOM designated shares), the requirement to account for bluefin caught in the Gulf of Mexico with GOM IBQ allocation, and use GOM IBQ allocation to satisfy the minimum IBQ allocation requirement would not apply. In other words, any vessel would be able to use GOM IBQ *or* ATL IBQ allocation to either account for bluefin catch (landings or dead discards) or satisfy the minimum requirements for IBQ allocation in the Gulf of Mexico. When this low share threshold provision is in effect, the maximum allowable bluefin catch from the Gulf of Mexico will be the weight of bluefin associated with the cap on GOM designated shares (*i.e.*, the default level of 35 percent, or lower if modified). If this level of bluefin catch (landings and dead discards) were reached in the Gulf of Mexico, NMFS would prohibit vessels from fishing with pelagic longline gear in the Gulf of Mexico for the remainder of that year.

*Comment 9:*

NMFS received comments inquiring whether modifications to regional IBQ share designations would impact catch rates of bluefin in the Gulf of Mexico or impact the bluefin stock since spawning adults are found in the Gulf of Mexico.

*Response:*



Amendment 7 established the 35-percent GOM/65-percent ATL regional designation approach for IBQ shares and allocations, in light of the fact that the Gulf of Mexico is recognized as the primary spawning ground for the western Atlantic bluefin tuna stock. Given the annual, dynamic determination of IBQ shares under Amendment 13 and inherent variability in the pelagic longline fishery (see response to comment 5), NMFS anticipates that catch rates of bluefin in the Gulf of Mexico could vary from year to year. However, NMFS does not anticipate that the regional designation approach, as modified under Amendment 13, will result in an increase in incidental catch of bluefin in the Gulf of Mexico above levels of such catch since 2015. To ensure continued protections in the spawning grounds, this final rule establishes a default cap (35 percent of total IBQ shares) on the maximum amount of bluefin that may be caught in the Gulf of Mexico, which could be adjusted downward to achieve conservation and management objectives per the criteria under § 635.27(a)(8). *See* response to comment 10 for further explanation. Further, when the low GOM share threshold provision is in effect, the maximum allowable bluefin catch from the Gulf of Mexico will be the weight of bluefin associated with the cap on GOM designated shares (*i.e.*, the default level of 35 percent, or lower if NMFS modifies the level consistent with other provisions in this Amendment). If this level of bluefin catch (landings and dead discards) were reached in the Gulf of Mexico, NMFS would prohibit vessels from fishing with pelagic longline gear in the Gulf of Mexico for the remainder of that year. The net ecological impact of the Amendment 13 measures on bluefin in the Gulf of Mexico is thus neutral.

*Comment 10:*

NMFS received comments suggesting reduction of the cap on bluefin catch from the Gulf of Mexico from 35 percent to 25 percent due to the regulations not allowing targeted fishing for bluefin in the Gulf of Mexico. Another commenter suggested allowing the use of ATL designated IBQ allocation during the second half of the year.

*Response:*

NMFS does not believe that a 25-percent cap on GOM-designated IBQ shares is needed to protect bluefin in the Gulf of Mexico. Under the measures implemented by this Amendment 13 final rule, the amount of bluefin incidental catch in the Gulf of Mexico would continue to be capped at a default level of 35 percent of total pelagic longline bluefin catch. The total amount of GOM-designated IBQ shares could be even less than 35 percent, as NMFS will annually calculate the total amount (not to exceed 35 percent) based on the percentage of pelagic longline sets in the GOM compared to total sets (using the most recent, three-year period for which NMFS has information). Moreover, if NMFS determines that a downward adjustment is needed to achieve conservation and management objectives, it may reduce the maximum amount of bluefin that can be caught in the Gulf of Mexico, based on the determination criteria at § 635.27(a)(8). There has not been a change in the status of the stock (no overfishing, overfished status unknown), and based on a 2021 stock assessment, ICCAT adopted a moderate increase in the western Atlantic bluefin total allowable catch. *See* 87 FR 33049, June 1, 2022 (final rule on Atlantic Bluefin Tuna and Northern Albacore Tuna Quotas). In addition, there has been no increase in fishing effort in the Gulf of Mexico, no increase in catch of bluefin from the Gulf of Mexico, nor other change in the fishery that would support consideration of a more conservative default cap level. As noted above, this final rule authorizes NMFS to reduce the cap, if necessary, for conservation and management reasons. NMFS disagrees that allowing the use of ATL designated IBQ allocation during the second half of the year is a practical means of providing flexibility in the fishery. The regional designation rules provide adequate flexibility and a reasonable opportunity to fish in the Gulf of Mexico, while limiting the amount of potential bluefin incidental catch. Furthermore, a mid-year change to accounting rules would be impractical to

administer in the Catch Shares Online System, the database accessible by dealers and vessel owners, which tracks bluefin catch and implements the relevant accounting rules.

**‘C’ Alternatives: Sale of IBQ Shares**

*Comment 11:*

NMFS received several comments in support of the preferred No Action alternative, under which the sale of IBQ shares would continue to be prohibited.

*Response:*

NMFS agrees that the sale of IBQ shares should continue to be prohibited. NMFS has not observed a need for Atlantic Tunas Longline permit holders to accumulate IBQ shares through purchase. For most shareholders, annual allocations combined with a minimal amount of leasing is likely to be sufficient for them to account for incidental bluefin catch. Additional rationale for preferring this alternative is in Chapter 2 of the Amendment 13 FEIS.

**‘D’ Alternatives: Cap on IBQ Shareholder Percentage or IBQ Allocation Use**

*Comment 12:*

NMFS received several comments in support of the preferred alternative to cap the accumulated sum of IBQ shares at 25 percent.

*Response:*

NMFS agrees that it is appropriate to cap the amount of shares an entity may hold or acquire at 25 percent of the total shares. The Magnuson-Stevens Act requires that NMFS must ensure that limited access privilege permit holders do not acquire an excessive share of the total limited access privileges.

*Comment 13:*

A pelagic longline association supported the preferred alternative to maintain the current regulations that do not limit the amount of IBQ allocation a vessel may lease, based on the rationale in the DEIS.

*Response:*

NMFS agrees that there should be no cap on the amount of IBQ allocation a vessel may lease. Long-term control of IBQ allocation by a single entity through leasing is not possible, because leasing of IBQ allocation occurs on an annual basis and expires at the end of each calendar year. The most likely reason a vessel might need to lease a large amount of IBQ allocation would be to account for an unusually large incidental catch of bluefin, which is consistent with the objectives of the IBQ Program. The limited amount of IBQ allocation available through annual distribution to shareholders, and the limited amount of IBQ allocation available via leasing (as well as the associated costs), provide strong incentives to avoid bluefin. Furthermore, there are other potential challenges associated with the incidental catch of bluefin by pelagic longline vessels including bluefin weighing down longline gear (which typically catch lighter species) and bluefin market limitations and volatility. Provided the IBQ Program continues to function in a manner consistent with its objectives, with individual vessel accountability for bluefin catch and incentives to reduce interactions with bluefin, there is no need for a cap on the amount of IBQ allocation that may be leased. During development of Final Amendment 13, NMFS became aware of concerns regarding recent, high bluefin landings by a small number of vessels. NMFS considers this to be an unusual event and not reflective of how the IBQ Program has functioned overall. A high bluefin landings event is unusual, and the risk of such an event will likely continue to be rare under Amendment 13.

*Comment 14:*

Several commenters supported simplification of the dealer reporting requirements for the IBQ Program. A pelagic longline association stated that removal of the bluefin dead discard reporting and personal identification number (PIN) requirements would lead to more timely reporting and better data. One commenter expressed the opinion that the

passwords associated with the Catch Shares Online System were too complex and had to be changed too often.

*Response:*

NMFS agrees that the removal of the bluefin dead discard reporting and PIN requirements will streamline the dealer reporting requirements. NMFS did not propose or analyze any changes to the password requirements associated with the Catch Shares Online System. Passwords are required elements of computer systems to maintain a high level of data integrity and security.

**‘E’ Alternatives: Adjustments to Other Aspects of the IBQ Program**

*Comment 15:*

NMFS received comments in support of the preferred alternative that would require vessels to mail in their EM hard drives after every two trips instead of after each trip, because it would reduce the burdens associated with the requirement to mail hard drives. NMFS received a comment stating that NMFS should implement flexibility in the EM regulations regarding the method of transferring data to the Agency, in order to allow the EM Program to evolve with changing technology without needing further rulemaking.

*Response:*

NMFS agrees that this requirement to reduce the frequency of mailing hard drives to the third-party contractor would reduce the amount of time and costs required of vessel operators as associated with the EM Program. NMFS continually seeks to make its regulations more efficient and flexible, consistent with statutory requirements.

*Comment 16:*

NMFS received comments that regulations for installation of EM cameras should not be expanded due to safety concerns with the installation of booms. Some commenters expressed support or conditional support for mounting one of the video cameras on a

boom or telescoping device to obtain a better view of bycatch events as gear is removed from the water. Some commenters said that deployment of booms could be done in a manner that addresses safety concerns, provided NMFS works closely with the individual vessel owners/operators to minimize the chances of the boom interfering with any of the vessel operations. Two commenters supported revising EM regulations to improve vessel-level accountability by making the EM Program more robust.

*Response:*

In 2015, the final rule for Amendment 7 authorized NMFS to “require vessel owners to make minor modifications to vessel equipment to facilitate installation and operation of the EM system,” including “a mounting structure(s) for installation of the camera(s)” (§ 635.9(b)(2)). This final rule clarifies that NMFS may require vessel owners to install permanent or semi-permanent hardware (*e.g.*, booms), if necessary, in order to mount and install video cameras at locations on vessels to obtain optimal views of fish and improve the accuracy of the resulting data. Not all vessels may need additional hardware. If needed, NMFS would coordinate closely with vessel operators to address any vessel operation or safety concerns, taking into consideration the unique layout and operation of each vessel. A description of the boom configuration would be included in each vessel’s Vessel Monitoring Plan, which is a customized description of the specifics of the EM components on each vessel. In addition to the safety aspect of installation, the vessel owner would have substantial input regarding the type and amount of materials used, because they would be paying for the installation. In Draft Amendment 13, NMFS stated that it would pay the costs of boom installation as funds are available. At this time, appropriated funds are not available, thus, if additional hardware is needed, vessel owners would be required to cover the costs of the hardware and installation. The video camera position will need to provide an optimal view of the area of the water surface and seaward of the rail, down to the water surface, where the gear and fish are hauled out of

the water, while minimizing potential safety hazards and interference with vessel operations. The process of boom installation will include discussion with vessel owners/operators and looking at current or historical video footage of the views provided by the video camera. NMFS agrees that improvement of the elements of the EM Program may contribute to the continued success of the IBQ Program and vessel-level accountability.

*Comment 17:*

NMFS received comments that additional fish handling protocols for EM should not be specified and that a measuring grid on the deck of the vessel is not needed. Some commenters were concerned that a measuring mat would be hazardous or difficult to secure, or that a painted grid would be impractical because decks are routinely resurfaced. Two commenters, including the EPA, supported the proposed expansion of EM requirements to improve vessel-level accountability. Two commenters supported the preferred alternative provided the grids accommodate individual vessel configurations and maintain safety.

*Response:*

NMFS believes that additional fish handling protocols that incorporate a measuring grid are necessary in order to improve the data quality. The vessel crew will be required to place retained fish on a mat with grid lines or a grid painted on the deck in view of the processing camera, so the video recording includes images of the fish. The use of a standardized grid will enable the video analyst to have a size reference to aid in the estimation of fish size and determination of fish species. For example, the total length of a fish and the relative size of the pectoral fin are some of the characteristics used in species identification. With the use of a reference grid, size estimation would be less affected by camera placement and angle, and the estimation of size and species identification may be improved. Further, a standardized reference grid may facilitate the

development and use of computer algorithms and automation of video analysis. NMFS or a NMFS-approved contractor will work with vessel owners/operators to specify a measuring grid that, to the extent practicable, accommodates the unique layout and operations of each fishing vessel. A description of the measuring grid will be included in each vessel's VMP, which is a customized description of the specifics of the EM components on each vessel. The vessel owner will have six months after the VMP is approved to install the measure grid specified in the VMP. NMFS changed its approach from Draft Amendment 13/DEIS, which stated that NMFS would pay the costs of grid installation as funds are available. At this time, appropriated funds are not available and NMFS is now requiring vessel owners to cover the cost of grid installation.

*Comment 18:*

NMFS received a comment about the reasons for the proposed changes to the EM Program, and questioning whether the Program has been successful in corroborating the set-based self-reporting of bluefin catch.

*Response:*

Under the EM Program, NMFS has been successful in corroborating set-based self-reported bluefin catch. NMFS released the Three-Year Review of the IBQ Program in 2019, which provides detailed information on the EM Program. VMS and EM data from 2015 through 2018 indicated that a high percentage of sets with bluefin catch reported via VMS that were audited by review of EM footage were confirmed. Likewise, a high percentage of sets that did not report bluefin catch via VMS did not show bluefin catch in audited EM footage. (Table 6.35 in Three-Year Review of the IBQ Program). Unpublished data from 2019 show a similarly high level of agreement between VMS reports and EM footage. Thus, there is high confidence in EM data on the number of retained fish when compared to VMS data; however, the EM data have relatively high variability in size estimation compared to self-reported data. In addition, the EM data on



bluefin discards are less likely to match the VMS data due to discard events that occur outside the camera's field of view. Thus, NMFS is implementing regulations to improve data quality, as explained in response to comments 16 and 17.

*Comment 19:*

NMFS received a comment questioning whether the proposed cost recovery program is consistent with other cost recovery programs administered by NMFS. Another commenter did not support implementation of a cost recovery program, because of the numerous reporting and monitoring costs that the pelagic longline fishery already incurs, and stated that Congress, in the Magnuson-Stevens Act, did not envision cost recovery for an incidental species.

*Response:*

NMFS developed the IBQ cost recovery program in consultation with NMFS staff from other regions with cost recovery programs for limited access privilege programs (LAPP). Differences among cost recovery programs reflect the unique aspects of each fishery managed under a LAPP, consistent with relevant Magnuson-Stevens Act provisions (16 U.S.C. §§ 1853a(e) and 1854(d)(2)). Recognizing that the IBQ Program is unique because bluefin is an incidental catch and not a targeted species, NMFS believes cost recovery for this program is consistent with the aforementioned provisions. As with other cost recovery programs, in the IBQ program, a fee would not exceed three percent of the ex-vessel value of fish harvested under the LAPP (bluefin). *See id.* § 1854(d)(2)(B). Because bluefin is an incidental species in the pelagic longline fishery, and the IBQ Program provides incentives to reduce interactions with bluefin, landings of bluefin are likely to remain low relative to targeted species. Given the relatively small total ex-vessel value of bluefin incidentally caught and landed by pelagic longline vessels, and the substantial incremental costs to NMFS associated with the IBQ Program, NMFS anticipates that the likely cost recovery fee would be three percent of the ex-vessel

value of bluefin sold (or less). As such, three percent of the ex-vessel value of bluefin will likely be a small amount of recoverable costs compared to other cost recovery programs. Therefore, this final rule implements a flexible cost recovery program, under which NMFS would make an annual determination whether a cost recovery fee paid by permit holders participating in the IBQ Program is warranted. If the total fees that could be collected are similar to or less than the administrative costs of the cost recovery program, no cost recovery fee would be collected.

**‘F’ Alternatives: Purse Seine Category and Quota Allocation Process**

*Comment 20:*

Several commenters supported the preferred alternative to change the method of allocating bluefin quota among the quota categories to simplify the process. Two of the commenters stated that the proposed measure would not result in any net gains for the fishery and one commenter noted it was procedural in nature.

*Response:*

NMFS agrees that the preferred alternative to change the mathematical method used in the annual quota allocation process to achieve a similar result through a simpler means is procedural in nature and would not meaningfully impact the net amount of bluefin quota allocated to the quota categories. Instead of a two-step process of subtracting the 68 mt from the U.S. baseline quota and then applying the category allocation percentages, there will be a one-step process applying slightly revised category allocation percentages.

*Comment 21:*

NMFS received many comments in support of the preferred alternative to discontinue the Purse Seine category and reallocate the bluefin quota upon implementation of Amendment 13. Commenters were in agreement with the underlying logic that the purse seine fishery has not been active for many years and that bluefin

quota is needed by the other bluefin quota categories that are actively fishing.

Furthermore, commenters thought that Purse Seine category participants who are not fishing should not be able to continue to profit by leasing bluefin quota to Atlantic Tunas Longline permit holders.

*Response:*

NMFS agrees that the discontinuation of the Purse Seine category is warranted. The Purse Seine category has been allocated 18.6 percent of the U.S. baseline bluefin quota. Discontinuation of the Purse Seine category and reallocation of its quota will provide additional quota to active fishing categories that are, at times, quota-limited, and increase the likelihood that more of the U.S. quota will be utilized. Bluefin quota allocated to the Purse Seine category has not been used in many years to harvest bluefin using purse seine gear, and a meaningful amount of that quota has not been leased to pelagic longline vessels. *See* response to comment 24 for further details. Quota that is allocated to Purse Seine category participants and then not used is a source of concern to participants of both the directed and incidental bluefin fisheries, who, as a result, may forego potential fishing opportunities. Reallocation of the Purse Seine category quota will also reduce various types of uncertainty that result from the inactive status of the Purse Seine category (see comment 23).

*Comment 22:*

NMFS received comments opposed to the preferred alternative, because it does not reallocate Purse Seine category bluefin quota to the Longline category and would affect IBQ leasing. Commenters noted that pelagic longline vessels have depended on leasing currently available Purse Seine category quota to account for bluefin catch under the IBQ Program, and that Purse Seine category quota provides a safety net in case of unexpected bluefin catch. A pelagic longline association representative stressed the reliance of pelagic longline fishermen on leasing Purse Seine category quota, and stated

that the IBQ Program would cease to function without that leasing opportunity. The representative stated that, in recent years, the agency has consistently reallocated 75 percent of the Purse Seine category quota to other categories, leaving 25 percent (4.4 percent of the U.S. baseline quota) available for leasing. Given that, 25 percent of the Purse Seine category quota should be reallocated to the Longline category. The State of Maryland's Department of Natural Resources supported including the Longline category in the reallocation due to their reliance on such quota for leasing. Another commenter stated that the increased IBQ allocation to many active pelagic longline vessels under the preferred IBQ share alternative would not make up for the loss of quota currently available from the Purse Seine category. Other commenters did not think that excluding the Longline category from the proposed reallocation was fair and equitable. One commenter said that an adequate amount of bluefin quota for pelagic longline vessels was very important due to a decrease in the bluefin market and revenue and the relative increase in the cost of leasing bluefin quota.

*Response:*

NMFS agrees that pelagic longline vessels have depended on bluefin quota that they lease from Purse Seine category participants to fish under the restrictions of the IBQ Program. IBQ Program participants require adequate IBQ allocation in order to meet the accounting requirements, participate in the leasing market, and mitigate risk. Adequate IBQ allocation is important to achieve a balance between incentives to reduce bluefin interactions and the ability to fish for target species to maintain profitability and supply the seafood market. In the reallocation method described in the proposed rule, NMFS did not reallocate bluefin quota from the Purse Seine category to the Longline category. After considering public comment, NMFS re-analyzed data regarding the leasing program and concluded that the Longline category should receive reallocated Purse Seine category quota in order to increase the likelihood of maintaining a successful IBQ allocation

leasing market in the future, including new entrants. As described in the Final Amendment 13/FEIS, pelagic longline vessels have been increasingly reliant on both the available Purse Seine category quota and inactive pelagic longline vessels as sources for bluefin quota leases. Because the incidental Trap category has a *de minimis* amount of quota and rare bluefin landings, NMFS is including the category in the reallocation too, to simplify the overall reallocation. Therefore, this final rule implements bluefin quota percentages that incorporate reallocation of the Purse Seine category quota to all of the other bluefin quota categories, including the Longline and Trap categories, in proportion to their baseline allocation percentages.

Reallocation of the Purse Seine category quota facilitates directed fishing by the Longline category while accounting for incidental bluefin catch and facilitates the ability for active HMS directed permit categories to catch their full bluefin allocations. Based on the current U.S. baseline quota, the Longline category will receive more quota (34.9 mt) under this final rule than the average amount of Purse Seine leases from 2016 through 2019 (23.9 mt). Given recent lease amounts, NMFS does not believe that reallocation of 25 percent of the Purse Seine category quota (54.88 mt) to the Longline category is needed in order to promote the effective functioning of the IBQ program. Moreover, leasing was not the reason Amendment 7 adopted the annual quota allocation mechanism that guaranteed that a minimum of 25 percent of the Purse Seine category quota would be available to the five historical participants. *See* response to comment 24 for more on the mechanism. Under Amendment 7 rules, annual allocations to the Purse Seine category are not based on IBQ leasing, but on the previous year's bluefin catch by each individual purse seine vessel, as the intent of the mechanism is to encourage purse seine vessels to catch rather than lease quota. *See* Final Amendment 7 to the 2006 Consolidated HMS FMP at pp. 23-24 (explaining preferred Alternative A3a: Annual Reallocation of Bluefin Quota from Purse Seine Category).

*Comment 23:*

NMFS received comments that supported maintaining the current status of the Purse Seine category and the associated quota rules under which, in recent years, 75 percent of the Purse Seine category quota has been reallocated annually to the Reserve category, and subsequently reallocated to the directed bluefin fishing quota categories. The commenters' view was that the current system of annual redistribution, which relies on the inactive status of the purse seine fishery, works well to meet the needs of the directed bluefin fisheries.

*Response:*

NMFS agrees that there have been benefits for the directed categories due to the lack of purse seine vessels fishing activity and the annual Purse Seine category quota allocation mechanism under the Amendment 7 regulations. Notwithstanding these benefits, there has also been uncertainty each year about the amount of quota that will be in the Reserve category, the amount of quota that NMFS may transfer inseason from the Reserve category to other quota categories, and the timing of such potential transfers. These sources of uncertainty make it difficult for vessel owners to plan their fishing season and may create market uncertainty. Lastly, there is an administrative burden for NMFS associated with conducting inseason transfers. Reallocation of bluefin quota from the Purse Seine category would result in increases in the relative sizes of all of the remaining quota categories, larger baseline quotas, reduced uncertainties, and efficiencies in the management process by reducing the number of inseason actions.

*Comment 24:*

NMFS received comments from a business that currently owns vessels that previously fished in the purse seine fishery that they do not support discontinuation of the Purse Seine category because the revenue from leasing bluefin quota contributes to the financial well-being of their company. They consider the business entities that lease

Purse Seine category quota to pelagic longline vessels to be ‘active’, and stated that the proposed measures would render their vessels and permits worthless. One commenter felt that the purse seine fishery should be able to become active again if it wishes, because the purse seine fishery is currently inactive due to high regulatory burdens.

*Response:*

The business that submitted the comments summarized above is not one of the five historical participants in the Purse Seine category. Since 1982, the Purse Seine category has been managed with non-transferrable limited entry permits, and limited to five participants who historically were financially dependent on the fishery. None of those participants uses purse seine gear any longer, nor have they recently. Although they continue to receive quota and may lease it, the current framework has inhibited maintaining and achieving, on a continuing basis, optimum yield in the fishery as a whole. Since Amendment 7 was implemented in 2015, 75 percent of Purse Seine category quota annually continues to not be used for bluefin fishing by purse seine vessels or not be available for leasing under the IBQ Program, and large amounts of quota are ultimately transferred to the Reserve category through an annual process. As a result, there is uncertainty each year about the timing and amount of quota to be transferred between the Purse Seine and Reserve and other categories, administrative burden on NMFS to administer the process, and uncertainty about the amount and price of bluefin quota that might be leased by Purse Seine category participants.

Limited entry was initiated due to the large harvesting capacity of purse seine gear and its ability to exceed U.S. quotas in very short periods of time. Limited entry was implemented with the intent of ensuring that only those persons who had depended on this fishery for all or part of their livelihood were allowed access and this approach was practical given the small pool of ownership in this sector of the fishery. Under this limited entry system, the use of purse seine gear was authorized, and equal baseline

quotas of bluefin were assigned to five individual vessel owners. This enabled owners to replace older vessels they owned with newer ones. Thus, NMFS limited the Purse Seine category to only the five participants who historically were financially dependent on the fishery and their five purse seine vessels. Although new entrants are prohibited, an owner of a vessel with an Atlantic Tunas permit in the Purse Seine category may transfer the permit to another purse seine vessel that he or she owns per 50 CFR 635.4(d)(5).

NMFS does not consider the Purse Seine category to be currently active, even though some of the historical permit holders have been leasing bluefin quota to pelagic longline vessels as allowed under the Amendment 7 regulations. Promoting commercial and recreational fishing under sound conservation and management principles and achieving, on a continuing basis, optimum yield from a fishery are key purposes of the Magnuson-Stevens Act. From 2005 through 2012, there was no purse seine fishing activity. From 2013 through 2015, only one Purse Seine category participant fished, making only a few sets, and accounting for only a small percentage of total annual bluefin landings each year (six, five, and four percent in 2013, 2014, and 2015, respectively). Recognizing that there had been low (to no) fishing and consistent underutilization of the Purse Seine category quota, Amendment 7 established the annual allocation mechanism to, among other things, optimize the ability for all permit categories to harvest their full bluefin quota allocations. Under this mechanism, based on their prior year's catch, each of the five historical participants would receive a minimum of 25 percent of 1/5<sup>th</sup> of the Purse Seine category quota, even if they did not fish, and up to 100 percent. The goal was to assure some level of fishing opportunity and create incentives for purse seine vessels to remain active in the fishery. *See* Final Amendment 7 to the 2006 Consolidated HMS FMP at pp. 23-24. Since 2015, there has been no purse seine fishing activity. The historical participants sold the vessels that they used to fish for bluefin to new owners that are not historical participants. Currently, there is no entity that



fishes for bluefin with purse seine gear. Vessels sold by the historical permit holders have been or may be earning revenue in fisheries for species other than bluefin, and NMFS did not receive public comment that indicates otherwise or that provides specific information related to impacts on permit values. With regard to leasing, it is unclear whether the commenter has in fact been leasing Purse Seine quota, and if so, how. The commenter is not one of the five historical participants and accounts used for leasing are issued to the historical participants. In any event, NMFS did analyze the effect of the amendment on harvesting privileges by estimating potential revenue loss from leasing bluefin quota and from potential future fishing/landings, and did not receive any public comments or new information since Draft Amendment 13/DEIS that is relevant to, or warrants a change in, these estimates. Even assuming the historical participants no longer obtain the financial benefits of leasing their quota, they have no property interest or other right to an ongoing income stream from those permits. Purse seine permits may not be assigned and are not transferable outside of the historical Purse Seine category participants, and like any limited access privilege may be modified, suspended or revoked. In this instance, NMFS has concluded that, in view of the long-term absence of active fishing, the elimination of the Purse Seine category will best contribute to achieving optimum yield and ensuring the greatest overall benefit to the nation.

*Comment 25:*

NMFS received comments suggesting changes to the proposed distribution of reallocated Purse Seine category quota, including that no quota should be reallocated to the Angling category, additional quota going to the General category should be allocated to particular subquota periods, and more quota should be reallocated to the Harpoon category. One commenter was concerned about the potential ecological impacts of reallocation of Purse Seine category quota to the Angling category, due to the impression

that it would represent a shift in the size range of fish caught, from large bluefin to smaller bluefin.

*Response:*

Quota categories are tightly associated with authorized gears and permit types. This structure based on gear and permit type remains a valid way to align quota distribution among diverse fisheries. Modifications to the relative size of the allocations (*i.e.*, the percentages for each quota category) in order to further optimize the use of the bluefin resource should address specific concerns or trends in the fishery. There is no new scientific information or fishery trends that warranted fundamental reconsideration of the entire allocation structure beyond the alternatives examined in this Amendment. This Amendment 13 final rule includes modifications to the relative size of the category allocations (*i.e.*, the percentages for each quota category) in order to streamline the allocation system, and further optimize the use of the bluefin resource through elimination of the Purse Seine category with redistribution to other categories. The fundamental sizes of the different quota categories in relation to each other was neither analyzed, nor changed. The scope and rationale for the allocation changes implemented by this final rule are consistent with NMFS Procedural Directive 01-119-01 “Criteria for Initiating Fisheries Allocation Reviews”, and the 2006 Consolidated HMS FMP. Additionally, NMFS implemented Amendment 12 to the 2006 Consolidated HMS FMP (86 FR 46836, August 20, 2021), an amendment that, among other things, addresses the 2016 revised National Standard guidelines and the 2017 Fisheries Allocation Review Policy Directive 01-119. Amendment 12 established triggers for the review of allocations for quota-managed HMS species, and these factors were appropriately considered within the examined alternatives. NMFS decided there was no need in Amendment 13 to consider fundamental changes to the baseline quota percentages (*see* Section 2.10.6), thus

reallocating Purse Seine category quota in proportion to those percentages also seems reasonable.

Although the suggestions that the additional quota being reallocated from the Purse Seine category to the General category should be allocated to particular subquota periods was not within the scope of the action, the justifications cited by commenters for favoring one subquota period or another provided useful information for NMFS' consideration of modifications to the General category subquota periods. Comments pertaining to the General category subquota periods or methods of allocating quota among the General category subquota periods are addressed in Comments 26 and 27. Regarding the potential ecological impacts of reallocation of quota from the Purse Seine category to the Angling category, NMFS has determined that the ecological impacts will be neutral. Although NMFS understands the commenter's concern, which is based on the premise that the harvest of bluefin of different size classes may have different ecological impact, the increase in the size of the Angling category quota is relatively small (from 19.7 to 22.6 percent of the bluefin quota).

#### **‘G’ Alternatives: Modifications to General Category Subquota Periods and/or Allocations**

##### *Comment 26:*

NMFS received comments that opposed, or asked what the justification was for the preferred No Action alternative to maintain the current structure of the General category fishery time periods and associated subquotas. One commenter stated that current management of the General category favors participants early in the season versus the fall participants over the last several years. They further elaborated that the current fishery has evolved into a part-time fishery with many less experienced recent entrants to the fishery, and noted specific concerns such as poor quality fish landed. They suggested various requirements including: that General category vessels be required to show tax

proof of their commercial status and abide by the relevant safety regulations; and that HMS Charter/Headboat vessels fishing under the General category quota verify that they take charter trips.

*Response:*

NMFS agrees that the General category fishery has changed over time. Handgear fisheries that target bluefin have consistently been very active, and the number of permit holders remains high. Increases in landings from the handgear fisheries that began prior to 2015 have continued. With such increases, there has been renewed public interest in the optimal and fair and equitable allocation of bluefin quota among seasons and geographic areas. These occurrences are the reason NMFS considered changes to the General category fishery in this amendment. Notwithstanding these changes to the fishery, based on the analyses in Draft Amendment 13/DEIS and the Final Amendment 13/FEIS (*see* Section 4.7.4), NMFS determined that the current structure of the fishery provides equitable fishing opportunities, as explained further in the response to Comment 27, is not modifying the General category regulations in the final rule. The open access permit categories that allow the use of handgear to target bluefin commercially are intended to provide opportunities for a variety of participants. NMFS acknowledges that among those participants there is likely to be a range in levels of experience and dependence upon the income derived from the fishery. There are licensing and safety regulations in place currently for the HMS Charter/Headboat and General category permitted vessels fishing commercially that do not apply to recreational vessels issued an HMS Angling permit.

*Comment 27:*

NMFS received comments expressing concern with one or more of the alternatives analyzed but not preferred. A commenter stated that the alternative that would allocate the General category quota equally among 12 monthly subquota periods

would benefit southern participants, but adversely affect finances and participation of northern participants. Commenters who are participants in the January through March fishery expressed interest in a larger January through March subquota to have more opportunity earlier in the season. A commenter did not support providing additional quota to the January through March subquota period because it would mean taking away quota from the June through and August subquota period, during the time when there is the highest level of participation by fishermen north of Cape Cod. Similarly a commenter was concerned that the alternative that would extend the January through March subquota period through the end of April would represent a shift in catch and opportunity from north to south, and believed that it would result in negative economic consequences later in the year. A commenter was concerned about the alternative that would increase the September and October through November subquotas, with a corresponding decrease in the June through August subquota. They stated that the quota for the June through August subquota period has been exceeded in recent years and the fishery has been closed prior to August 31. They explained that the greatest fishing effort in terms of man-hours is during the June through August period, and that reducing the quota during this time period would represent a significant adverse impact on fishing opportunity. One commenter suggested that NMFS should prioritize August General category fishing by creating a separate August subquota in order to maximize fishing opportunity and number of participants. The commenter stated that during August the greatest amount of bluefin availability coincides with the greatest amount of fishing effort. Other commenters who are participants in the October through November period or December period fisheries expressed concerns regarding the uncertainty of whether General category quota would remain for the times when commercial-sized bluefin are available in their areas. Some commenters preferred to see more opportunities available when market prices are generally higher, such as in the fall months. Several commenters noted that fall bluefin

are the most valuable due to higher fat content and that providing more quota to June through August would increase landings of lower quality and lower value fish. Several commenters stated that commercial fishermen on Cape Cod and the islands of Martha's Vineyard and Nantucket depend on quality fish in the late fall. Allocating the additional quota for the fall would ensure that bluefin quota would last into the fall. Several commenters were concerned that, in recent years, some of the subquotas have been reached and the General category has been closed while fishing opportunities (*i.e.*, fish availability) remained and meanwhile other subquotas are not reached. One commenter stated that NMFS should create a separate November subquota period.

*Response:*

NMFS acknowledges that there are varied views on how the General category could be modified. As noted by commenters, there are potential trade-offs associated with each of the alternatives analyzed, including the preferred alternative, depending upon the time of year or location being considered. The bluefin fishery is highly dynamic because bluefin are highly mobile, with a distribution that changes seasonally and annually. Fishing permits are open access, thus permit holders may fish in any geographic location they choose. Price fluctuations do not show a strong pattern during the year, despite perceptions that prices are higher in the fall. However, there are also predictable patterns in bluefin distribution that are reflected in the current structure of the General category subquota time periods. The larger quota associated with some subquota periods reflects the general seasonality, historical availability, and relative sizes of the historical seasonal fisheries for bluefin. NMFS analyzed various quantitative metrics in Draft Amendment 13/DEIS and the Final Amendment 13/FEIS to enable standardized comparisons among the different subquota periods and alternatives (*e.g.*, Tables 4.32 through 4.40). Standardized metrics are used to compare among quota periods because the quota periods are allocated different amounts of bluefin, and are of different duration. After considering

information from recent years, NMFS believes that the subquotas continue to be appropriate, given fish availability, fishing effort, and bluefin landings during the different subquota time periods, and thus provide fair and equitable fishing opportunities. It is important to note that the subquotas work in concert with several regulatory mechanisms that provide flexibility in how the amount of quota is divided among the subquota periods. NMFS may transfer unused quota from one subquota period to a subsequent subquota period in the year such that the quota allocated to subquota periods may increase. Unused quota may, if remaining unused as the year progresses, all be transferred into the December subquota period. NMFS may allocate quota from the December subquota period to the January through March subquota period, may allocate additional quota from the Reserve category, or may utilize changes in retention limits to modify the rate of catch to facilitate the attainment of subquotas and the annual quota.

In 2021, NMFS resumed the use of restricted-fishing days to further facilitate the attainment of subquotas, and a schedule of restricted-fishing days was finalized for 2022 (87 FR 33056, June 1, 2022). The data from recent years suggest that the flexibility in the quota system provided by these regulatory mechanisms is working. Landings (as a percentage of quota) have been increasing in recent years. Subquota periods that have lower percentage allocations have not necessarily been limited by them. For example, during 2018 and 2019, landings during the January through March subquota period were 8 percent and 13 percent (respectively) of the total General category bluefin landings, despite that period having an initial allocation of 5.3 percent of the General category quota. Similarly, during 2018 and 2019, landings during the October through November subquota period were 18 percent and 22 percent of the total General category bluefin landings, despite that period having an initial allocation of 13 percent (Figure 3.3).

Although the amount of bluefin quota in the Reserve category will be reduced under Amendment 13 as a result of the removal of the Purse Seine category, and the associated

flexibility to transfer quota from the Reserve to the General category will be reduced, the General category will be allocated a larger portion of the U.S. bluefin quota. NMFS will continue to monitor the General category carefully and make inseason adjustments per its regulations to facilitate a well-managed fishery that, among other things, provides equitable fishing opportunities.

#### **‘H’ Alternatives: Modifications to the Angling Category Trophy Fishery**

##### *Comment 28:*

NMFS received comments in support of the proposed measure to modify the current Angling category Trophy North subquota area by dividing the area into two zones (north and south of 42° N. lat., off Chatham, MA) and modify the allocation percentages to provide opportunities for anglers fishing off New England and make the trophy fishery more equitable. One commenter noted that the Angling category boosts local economies through angler expenditures on boat fuel and fishing tackle. Two commenters were concerned that in order to create the new trophy suballocation for the Gulf of Maine trophy area, NMFS would increase the Trophy bluefin allocation through an equivalent reduction of the subquota for large school/small medium bluefin subquota (bluefin that measure from 47 inches to less than 73 inches curved fork length (CFL)). They noted that the large school/small medium size class is an important component of the fishery. There were suggestions that NMFS increase the quota allocation to the Angling category and to the trophy subquotas, particularly for New England and for the New York Bight.

##### *Response:*

NMFS agrees that dividing the current Trophy North subquota area into two zones and providing allocation to the new area (Gulf of Maine) will make the fishery more equitable by providing a modest amount of trophy quota to anglers north of 42° N. lat. NMFS agrees that the recreational HMS fishery is an important contributor to the economy. Through this final rule NMFS will increase the portion of the Angling category



quota allocated for trophy bluefin from 2.3 percent to 3.1 percent to provide quota to the new area. The source of that additional quota will be from the large school/small medium size range. Because the amount of school bluefin (27" - < 47") that can be caught each year is limited in the codified regulations, and in compliance with ICCAT's binding western Atlantic bluefin recommendation, to no more than 10 percent of the annual U.S. bluefin quota, any increase to the trophy subquota (73" or greater) will need to be balanced with an equivalent reduction of the subquota for large school/small medium bluefin subquota (47" - < 73"). NMFS disagrees that the reduction in the relative amount of large school/small medium fish allocated will be problematic. There will be only a minor decrease in the amount of allocation for large school/small medium bluefin; the subquota will represent approximately 52 percent of the Angling category quota. In recent years, Angling category landings overall have averaged less than the Angling category quota, and in many years, landings of large school/small medium bluefin have averaged less than the available quota for those size classes. NMFS disagrees that more quota should be allocated to the Angling category. In determining the scope of alternatives analyzed in Amendment 13, NMFS decided not to consider making fundamental changes to the structure of the bluefin quota category allocations, as explained in response to Comment 25. The change to the structure of the Angling category trophy fishery is a relatively minor aspect of the recreational bluefin fishery. The primary intent of the recreational trophy allocation is to reduce discards of trophy bluefin, and not to support a directed fishery.

*Comment 29:*

NMFS received several suggestions regarding the current geographic areas associated with the trophy fishery. There were suggestions to move the current Trophy North/South line from its current location in southern New Jersey (off Great Egg Inlet) southward to Ocean City, Maryland, to create more opportunity for Maryland anglers,

and to consider alternating the location of the line every other year. The Maryland Department of Natural Resources elaborated that they did not support any of the 'H' alternatives because they would continue to be inequitable to those fishing out of Ocean City, Maryland. They stated that Maryland is within the Trophy South area, but does not have access to the fish because the quota is caught (in areas to the south of Maryland) before the fish are accessible to Maryland. For this reason they felt the alternatives were not fair to anglers off of Maryland, Delaware, or southern New Jersey and, therefore, suggested moving the southern boundary of the Trophy North area southward to include Ocean City, Maryland. Another commenter suggested creation of another trophy geographic area and associated trophy subquota within the current Trophy South area, because the subquota is often filled off North Carolina and Virginia Beach, Virginia.

*Response:*

NMFS disagrees that Amendment 13 should modify the southern boundary of the Trophy North area or create a new southern trophy area. In the past, the southern boundary of the Trophy North area was further to the south, and fishermen requested that NMFS move the line to the north. Specifically, NMFS implemented the boundary change from off Ocean City, Maryland to off Great Egg Inlet, New Jersey in a 2001 final rule, based on public comments, to reduce confusion regarding fishing areas and catch limits and to reduce the likelihood of vessels being excluded from participating in the trophy bluefin fishery (66 FR 42801, August 15, 2001). Given the highly dynamic nature of the fishery, there may be times during which a particular geographic area has less opportunity for trophy bluefin landings than during other times. Permit holders may fish for bluefin in any geographic location they choose, as long as they are fishing in an area that is open.

**I Alternatives - Modifications to other Handgear Fishery Regulations**

*Comment 30:*

Two commenters supported the alternative that would allow the use of harpoon gear by vessels issued an HMS Charter/Headboat permit, in order to provide flexibility and fishing opportunity. To address safety concerns, commenters suggested allowing only the vessel captain and crew – and not passengers – to use harpoon gear.

Alternatively, the use of harpoon gear could be allowed on non-for-hire commercial trips only. Several commenters did not support prohibiting vessels with General category permits from using harpoon gear because landings in that permit category by harpoon gear were relatively low and therefore not a concern. Those commenters further noted that a prohibition on harpoon gear use by vessels in the General category would force vessels to obtain Harpoon category permits instead.

*Response:*

NMFS disagrees that vessels fishing for bluefin issued an HMS Charter/Headboat permit should be allowed to fish with harpoon gear. In the 2008 rule on this subject, there were public concerns about safety and the liability associated with allowing the use of harpoon gear on “for-hire-trips” (trips on which there are paying passengers aboard a vessel issued a Charter/Headboat permit, fishing under recreational rules). NMFS does not believe that safety and liability concerns would be adequately addressed by limiting harpoon use to only the vessel captain and crew because such a restriction would be difficult to enforce, and charter clients are likely to include a variety of levels of boating and fishing experience. NMFS also does not prefer allowing harpoon use by Charter/Headboat permit holders on non-for-hire commercial trips, as there is adequate opportunity for vessels fishing commercially to utilize harpoon gear under the General or Harpoon category permits. NMFS agrees that prohibiting General category permit holders from using harpoon gear is not necessary. Currently, both the General and Harpoon categories are authorized to use the gear, and bluefin landings by vessels using

harpoon gear fishing in the General category comprise a relatively low percentage of the General category landings.

*Comment 31:*

Several commenters did not support the proposed measure to implement a retention limit for the Harpoon category. These commenters stated that it is important for Harpoon category participants to maintain the ability to land as many fish per day as they can and that a retention limit would hamper their ability to take advantage of the limited opportunities to catch bluefin during the window of time when bluefin are available to harpoon gear on the water's surface. The specific reasons the commenters did not support a retention limit varied and included: reliance by some participants on the fishery to make a living, the importance of being able to capitalize on good weather days to their overall business success, climate change reducing good weather fishing opportunities, and the need for the flexibility to catch many bluefin on a particular trip because on some days they will catch no fish. Some commenters stated that Harpoon category fishermen have shown the willingness and ability to voluntarily control catch based on market demand. One commenter said that the analysis should not rely on data from 2019 due to atypical high landings that year.

*Response:*

NMFS agrees that some vessel owners rely on revenue from the Harpoon category fishery as part of their annual income, and that the opportunities to target bluefin using harpoon gear are limited by fish availability and weather. However, NMFS disagrees that implementation of a retention limit on the total number of bluefin retained by vessels fishing in the Harpoon category will be problematic. A default trip limit set at 10 fish will likely constrain only a small percentage of trips, with the potential economic benefits of a longer season and/or associated extension of fishing opportunities to a greater number of Harpoon category participants. Furthermore, this measure will allow

NMFS the ability to adjust the retention limit via inseason action to avoid closing the fishery. NMFS closed the 2019 Harpoon category fishery effective August 8, 2019, when the adjusted quota of 91 mt was met; Harpoon landings for 2019 totaled approximately 102 mt (84 FR 39208, August 9, 2019). The determination that the retention limit is warranted does not rely solely on the presumption of high total landings (such as during 2019). The retention limit will be a useful management tool due to the dynamic and diverse nature of the fishery. A retention limit of 10 bluefin may prevent a few vessels landing large numbers of bluefin from having a disproportionate impact on the rate of harvest of the limited quota, and reduce potential market issues associated with high landings during a short period of time.

*Comment 32:*

Several commenters did not support the preferred No Action alternative that will maintain the current Harpoon category start date of June 1, but instead supported the alternative that would move the start date earlier to May 1. They explained that bluefin, a cold water species, are no longer available at the surface to the harpoon fishery once surface waters warm during the summer. They state that in the past, bluefin remained at the surface in September and October, but recently are no longer on the surface by mid-August, and that given warmer surface temperatures associated with climate change, the harpoon category season needs an earlier start date. Commenters indicated that bluefin migrate through southern New England in May and that a May 1 start date would allow opportunities for Harpoon category participants while minimizing potential gear conflicts or market competition with the General category. Some commenters supported the preferred No Action alternative to maintain the current June 1 Harpoon category fishery start date. They were concerned that an earlier opening date would result in earlier closure. They also noted concerns about equitable access to the fishery among different geographic regions (*i.e.*, that an earlier start date would benefit participants in Southern

New England to the detriment of northern participants, especially the traditional participants in Maine). One commenter also expressed concern about potential baiting activity behind fishing vessels using bottom trawls or dredges and the effect on early season surface accumulations of bluefin.

*Response:*

NMFS disagrees that the current start of the Harpoon fishery should be moved from June 1 to May 1. Maintaining the current start date of June 1 for the Harpoon category, which coincides with the start date for the General category fishery, will facilitate enforcement and business planning, and provide greater certainty to participants regarding fishing opportunities and market conditions. Given the dynamic nature, geographic range, and diverse participants of the commercial handgear fishery for bluefin, maintaining the June 1 start date is likely to result in equitable fishing opportunities.

*Comment 33:*

Two commenters supported extending the ability for permit holders with an Atlantic Tunas permit in the General, Harpoon, or Trap category, or Atlantic HMS permit in the Angling or Charter/Headboat category, to change permit categories from within 45 days of purchase to the end of the fishing year as long as the vessel has not landed a bluefin.

*Response:*

NMFS agrees that allowing applicants to change permit types as long as they had not landed a bluefin will give vessel owners more opportunity to change their permit type, and provide flexibility to account for mistakes made by permit applicants when choosing the permit type. Because vessels are not allowed to land bluefin in two quota categories within a fishing year, the restriction will still preclude vessels from gaining

any sort of an advantage over vessels fishing under a single permit type within a fishing year.

### **General Comments on the IBQ Program and Pelagic Longline Fishery**

#### *Comment 34:*

NMFS received general comments regarding the current status of the pelagic longline fishery, as it relates to Amendment 13. The common themes of such comments were that the fishery is struggling and that it is very important to: maintain the viability of the fishery; fully utilize the U.S. swordfish quota; maintain domestic food production to decrease dependence on imports for national security; and have the United States continue to serve as a strong example internationally of a well-managed fishery.

Commenters stated specifically that NMFS needs to preserve the viability of the pelagic longline fishery by preserving its flexibility and allocating an adequate amount of IBQ allocation in order to account for sets with high bluefin catch and maintain opportunity to fish for swordfish and other target species. Commenters noted diverse challenges facing the industry including competition from imports, closed areas, declining participation, challenges for new entrants, the high cost of fishing gear, the cost of leasing IBQ allocation, a deterioration of the bluefin market, and difficulty in finding experienced, quality crew. One commenter stated that the proposed measures do not minimize the disadvantage to U.S. fishermen in relation to foreign competitors and do not minimize adverse social and economic impacts to the pelagic longline industry.

#### *Response:*

NMFS agrees that the pelagic longline fishery faces numerous and serious challenges. The elements of Amendment 13 pertaining to the pelagic longline fishery focus on modifications to the IBQ Program to address some of the challenges.

Amendment 13 will implement changes to the IBQ Program that provide additional flexibility for the majority of pelagic longline vessels, including dynamic determination

of IBQ shares, a more flexible means of regional designation of IBQ shares, and a low-share threshold in the Gulf of Mexico; an increase in the Longline category quota to 15.9 percent of the U.S. bluefin quota; and relaxation of the requirement for mailing EM hard drives. Amendment 13 will also authorize the future development of a bluefin quota set-aside, if needed, for the pelagic longline fishery. The selection of the specific measures being implemented from among the alternatives analyzed in the FEIS minimize the adverse social and economic impacts to the pelagic longline industry. NMFS is open to future consideration of regulatory changes that would address other issues in the fishery, such as obtaining data from spatial management areas, and considering modifications to such areas to optimize the balance of protection of bycatch species and access to target species.

*Comment 35:*

NMFS received a comment from an environmental group that the reduction in bluefin bycatch under the IBQ Program has been a compelling success story, and that, since its implementation, the pelagic longline fishery has not exceeded its bluefin quota. One commenter stated that Amendment 13 would increase sustainability and transparency, and one commenter expressed appreciation for NMFS' efforts to improve the pelagic longline fishery regulations.

*Response:*

NMFS agrees that the IBQ Program has successfully reduced the incidental catch of bluefin substantially compared to previous levels, and agrees that Amendment 13 will further improve the IBQ Program.

**General Comments on Amendment 13**

*Comment 36:*

NMFS received comments that the comment period was open during a busy fishing season and requesting that the comment period be extended a second time to



March 2022, and the date of implementation postponed, so that the commenters would have time to read the Amendment 13 documents. They also stated that such extension of the comment period would provide NMFS time to look into the issue of fishermen baiting and harpooning bluefin behind fishing vessels using bottom trawls or dredges. NMFS received comments that the Agency did not address suggestions from some pelagic longline representatives regarding the Amendment 13 scoping document. One commenter expressed concern that the impacts of these management measures would force the species into extinction, and that the quota for bluefin should be zero. The EPA commented that they support efforts to reduce bluefin dead discards and that preventing wasteful bycatch will become increasingly important as various impacts of climate change on the ocean intensify impacts on marine resources.

*Response:*

The original comment period on the proposed rule was from May 21, 2021 through July 20, 2021, and then extended through September 20, 2021 (86 FR 38262, July 20, 2021). The four-month duration of the comment period provided reasonable opportunity for the public to comment on the proposed management measures.

Amendment 13 did not analyze alternatives to address concerns about new fishing strategies in the harpoon fishery, but could consider this topic for future discussions at the HMS Advisory Panel. NMFS did not analyze all of the suggestions for management measures that it received during the scoping phase of the development of Amendment 13, but did consider input from scoping and analyzed a reasonable range of alternatives.

Measures implemented by this final rule do not alter, and are consistent with, the ICCAT-adopted western Atlantic bluefin quota and U.S. portion of the quota and the best scientific information available. Currently, the stock is not experiencing overfishing. NMFS agrees that bycatch reduction will continue to be important in the context of future climate change impacts on marine resources.

## **Management Options Considered but Not Further Analyzed**

### *Comment 37:*

NMFS received comments on management options that were considered but not analyzed. There were multiple comments in support of annual accountability for quota debt under the IBQ Program. Commenters stated that the flexibility of annual accountability is needed to facilitate leasing of IBQ allocation throughout the year, which is particularly important if the Longline category does not receive any bluefin quota from the Purse Seine category quota reallocation. Commenters also stated that the current quarterly accountability is not needed because there are adequate deterrents with the IBQ Program to prevent targeting bluefin.

### *Response:*

NMFS disagrees that annual accountability should have been an alternative that was analyzed or preferred. Vessels have successfully accounted for bluefin catch under the quarterly accountability rules. Although annual accountability would provide substantial flexibility for vessel owners, this method of accountability may result in higher prices for IBQ allocation leases, a compressed market for IBQ allocation at the end of the year, and reduced incentive to avoid bluefin. The timing of quarterly accountability is likely to maintain incentives for vessels to utilize fishing strategies that minimize the likelihood of interactions with bluefin, and reduce the ability for vessels to accrue large amounts of quota debt. For example, a vessel that is not able to avoid bluefin catch and accrues quota debt would be constrained on a quarterly basis. A vessel with quota debt at the beginning of the quarter would not be able to lawfully fish with pelagic longline gear until it leased sufficient IBQ allocation to ‘pay’ for the quota debt. This requirement provides strong incentives to avoid catch of bluefin and could prevent the vessel from pelagic longline fishing if the vessel owner is not able to find affordable IBQ allocation to lease from another permit holder. In contrast, under annual accountability, a

vessel would be able to accrue quota debt throughout the year, and therefore incentives to use a fishing strategy that avoids bluefin are weaker. Quarterly accountability provides a more appropriate balance between accountability and flexibility than annual accountability would. While leasing from the Purse Seine category will no longer be available, as explained in response to comment 22, Amendment 13 addresses leasing concerns by reallocating a portion of the Purse Seine category quota to the Longline category.

### **Changes from the Proposed Rule (86 FR 27686; May 21, 2021)**

This section explains the changes in the regulatory text from the proposed rule to the final rule. Changes were made in response to public comment, refined analyses, or clarification of text for the final rule. Therefore, where relevant, the description of measures implemented by this final rule include any changes from the measures in the proposed rule and Draft Amendment 13/DEIS. Where NMFS modified the proposed measures or adopted a different alternative that was not proposed, such alternatives fell within the scope of, or are a logical outgrowth of, the alternatives in the proposed rule and DEIS. The changes from the proposed rule include changes to the method of determining quota shares in the IBQ Program; IBQ regional designation rules; Purse Seine category reallocations; Harpoon category retention limits; and changes to the electronic monitoring program impacts. The changes from the proposed rule text in the final rule are described below.

1. Section 635.9, paragraphs (c) and (e). Modification to the standardized reference grid and VMP.

NMFS received a number of comments on Draft Amendment 13 and the proposed rule regarding the measuring grid, including accommodating individual vessel configurations and maintaining safety. *See* comment 17 under Responses to Comments. After reviewing these comments, NMFS determined that it is important to provide time

for a measuring grid to be adapted for each vessel and for each vessel to install and begin using that grid. The final rule thus provides that, over the next year, NMFS or a NMFS-approved contractor will work with vessel owners/operators to specify a measuring grid that, to the extent practicable, accommodates the unique layout and operations of each fishing vessel. A description of the measuring grid will be included in each vessel's VMP, and a vessel owner will have six months after the VMP is approved to install the grid specified in the VMP. *See* response to comment 17 for further explanation.

Additionally, because appropriated funds are not available, the final rule requires vessel owners to cover the cost of grid installation, which is a change from the proposed rule.

2. Section 635.15, paragraphs (b), (c), and (e), § 635.28, paragraph (a), and § 635.34, paragraph (b). Modification to the IBQ share eligibility, distribution, and allocation methods.

The proposed rule determined IBQ shares based upon landings of designated species (swordfish, and yellowfin, bigeye tuna, albacore, and skipjack tunas) as the measure of fishing effort and four percentile tiers (Sub-Alternative A2c). Public comments noted concerns regarding the species included as designated species (*see* comment 2); potential factors that may affect a vessel's fishing strategy, which species are fished, and what is landed (*see* comment 3); disproportionate impacts the tiers may have on IBQ shares (*see* comment 4); and different views on the best methods for determining IBQ shares (*see* comment 3). After considering public comments, NMFS decided to change the final rule to determine IBQ shares annually based on sets as the measure of fishing effort and eliminate tiers, instead providing each eligible vessel with a "customized" share. NMFS will only count one set (a single deployment and retrieval of pelagic longline gear) per day towards the determination of IBQ shares. *See Pelagic Longline Fishery: Annual IBQ Share Determination* above for further details. This provides a standardized, uniform method for determining IBQ shares for a geographically

diverse fleet with a range of vessel sizes and fishing strategies. In addition, it addresses a concern raised about short sets being deployed for the purpose of influencing IBQ share determinations, and is simpler for NMFS to implement. *See* responses to comments 2-4 for further explanation.

Pursuant to existing authority at § 635.27(a), NMFS may increase or decrease the baseline Longline quota through inseason or annual adjustments. When doing so, NMFS would apply each IBQ shareholder's share percentage to the amount of quota increase (subject to the applicable GOM cap) or decrease, and will notify shareholders of any resulting changes in their IBQ allocations.

After considering a concern raised about potential, future declines in effort in the Gulf of Mexico resulting in a very low percentage of GOM-designated shares in some years and severely limiting operation of the fishery, NMFS conducted further analyses and decided to add a low GOM designated share threshold (5 percent or less) to the final rule. *See* comment 8 and response under Response to Comments for further explanation. If the threshold is triggered, either GOM or ATL shares and resultant allocations may be used to account for BFT caught in the Gulf of Mexico and to satisfy the minimum IBQ requirement. Other existing regional accounting rules would continue to apply, and there would be a cap on BFT incidental catch in the Gulf of Mexico (weight of bluefin associated with 35-percent or lower cap on GOM designated shares). *See Pelagic Longline Fishery: Regional Designations for IBQ Shares and Resultant Allocations* above for further details.

Lastly, based on public comment about new entrants (*see* comment 6), NMFS adds to the framework provisions of the 2006 Consolidated HMS FMP and associated regulations authority for a *de minimis* amount of bluefin quota from the Longline category quota prior to calculating the annual IBQ allocations. This lays the groundwork for potential, future rulemaking, if needed. No set aside is being established at this time.

3. Section 635.19, paragraph (b). Correction and clarifications to Atlantic tunas primary gears.

The proposed rule incorrectly listed bandit gear and green-stick gear as primary gears for the Angling category for BAYS. The final rule deletes those gear types. In addition, consistent with an existing prohibition that refers to fishing for, catching, retaining, or possessing bluefin tuna, the final rule adds “catching” or “catches” in several places where the other terms appear in paragraph (b).

4. Section 635.23, paragraph (d). Modification regarding Atlantic Tunas Harpoon category permit holders retention limits for bluefin.

The proposed rule maintains the current Harpoon category retention limit (range) of large medium bluefin, but sets a combined daily retention limit on the total number of large medium and giant bluefin at 10 fish. These aspects are unchanged in the final rule. The final rule adds inseason authority to adjust the combined daily retention limit between 5 to 10 fish, in order to avoid closing the fishery. *See **Harpoon category*** section and comment 31 and response, above, for further details and explanation.

5. Section 635.27, paragraph (a) and subparagraph (a)(3). Modification to the commercial and recreational quotas for bluefin.

The proposed rule would have reallocated Purse Seine category quota proportionally to the directed bluefin quota categories (General, Angling, Harpoon, and Reserve categories) (preferred Alternative F4). The final rule adds Longline and Trap, and reallocates the Purse Seine category quota to all categories by revising each category’s percentage proportionally. NMFS made this change in light of public comments expressing concern about impacts on the IBQ leasing market as a result of discontinuation of the Purse Seine category, further analyses on the source of pelagic longline IBQ leases, and the agency’s conclusion that the Longline category should be

included in the reallocation to increase the likelihood of a successful leasing market. *See* **Purse Seine** section and comment 22 and response above for further details.

The final rule also amends § 635.27(a)(3) to add: “For purposes of § 635.28(a)(1), regional IBQ allocations under § 635.15(c)(3) and the BFT catch cap for fishing in the Gulf of Mexico (§ 635.15(c)(3)(iii)) are considered quotas.” Section 635.28(a)(1) provides for closure authority. Adding the BFT catch cap here ensures that, if the low GOM designated shares threshold is triggered, NMFS can take action if the catch cap is reached or projected to be reached. Section 635.28(a)(1) already authorizes closure action for regional IBQ allocations; deleting reference there to regional IBQ allocations and adding the reference to § 635.27(a)(3) merely simplifies the regulatory text.

6. Section 635.28, paragraph (a). Modification to fishery closures.

Consistent with the edit to § 635.27(a)(3) discussed above, the final rule deletes reference to regional IBQ allocations here.

7. Section 635.34, paragraph (b). Adjustment of management measures.

As explained above, NMFS has added to the framework provisions of the 2006 Consolidated HMS FMP authority for a *de minimis* set aside of bluefin quota from the Longline category. The final rule makes a parallel edit to § 635.34.

8. Section 635.71 and other sections throughout the rule. Technical adjustments.

In addition to the primary changes described above, additional technical changes were made throughout the rule to improve upon clarity (*e.g.*, change in punctuation, reordering phrases or sentences, adding additional information or cross-references), correct capitalizations, or correct cross-references for paragraphs that are changing. In section 635.71, the final rule adds a prohibition corresponding to an existing requirement at § 635.23(f)(2), which requires vessels with pelagic longline gear on board to retain all dead large medium or giant bluefin. The final rule clarifies that both apply to retaining “and land[ing]” bluefin, and instead of specifying a size for the fish, uses “large medium

or giant” BFT, which are defined terms under § 635.2. Other changes in § 635.71 correct cross-references based on the changes in this final rule. A number of other technical changes can be found throughout the rule and do not affect the intent of the final rule. Rather, these changes are editorial in nature or clarifications to existing regulatory text.

### **Classification**

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law.

As described above, NMFS prepared an FEIS for Amendment 13. The Notice of Availability for the FEIS was published in the **Federal Register** on May 13, 2022 (87 FR 29310). In approving Amendment 13, NMFS issued a Record of Decision (ROD) identifying the selected alternatives. A copy of the ROD and the FEIS, which includes detailed analyses of a reasonable range of alternatives to meet rulemaking objectives, is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS requested reinitiation of consultation under the Endangered Species Act (ESA) in July 2022, on the effects of the Atlantic HMS pelagic longline fishery due to new information on mortality of giant manta ray that exceeded the mortality anticipated in the May 2020 Biological Opinion on that fishery. As explained in the **Background** section, in accordance with section 7(d) of the ESA, NMFS has determined that, during consultation, pelagic longline fishery activity consistent with the 2020 Biological Opinion will not result in an irretrievable or irreversible commitment of resources which would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures and that continued compliance with the Reasonable and Prudent Measures and Terms and Conditions in that biological opinion will avoid



jeopardy to ESA-listed species, consistent with section 7(a)(2) of the ESA.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A summary of the FRFA, which must address each of the requirements in 5 U.S.C. 604(a)(1)-(5), is below. The entire FRFA is included in the FEIS and is available from NMFS (see ADDRESSES).

Section 604(a)(1) of the RFA requires Agencies to state the objective of, and legal basis for, the action. The objectives of, and legal basis for, this final rule are set forth in the **Background** section above.

Sections 604(a)(2) and (3) of the RFA require that a FRFA include a summary of significant issues raised by public comment or by the Chief Counsel for Advocacy of the Small Business Administration in response to the IRFA and proposed rule, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the rule as a result of such comments. NMFS did not receive any comments on the proposed rule from the Chief Counsel for Advocacy of the Small Business Administration. Additionally, NMFS did not receive any public comments specifically on the IRFA, however the Agency did receive some comments regarding the anticipated or perceived economic impact of the rule. The comments and responses included below are those that pertain specifically to such economic impacts. A summary of all of the comments received and the Agency's responses are provided above.

Comment 2 noted that dolphin fish provide up to 30 percent of the revenue for a pelagic longline vessel, thus it should be included as a designated species under the proposed, dynamic allocations of IBQ shares. While NMFS agrees that dolphin fish is an economically important component of the pelagic longline fishery, based on other public

comments and additional analyses, NMFS decided to use pelagic longline sets, not designated species, for the allocations.

Comment 4 noted that the use of tiers in the proposed, dynamic allocation alternatives has the effect of disadvantaging some vessels, as it would assign IBQ shares based on four distinct percentages. Some vessels could receive less IBQ shares and may have to spend more money to lease additional shares from other vessels, or lose potential income from additional shares that could have leased to other vessels. NMFS agrees that there were negative implications for individual vessels associated with the use of tiers. After consideration of public comments, NMFS determined that the beneficial aspects of the use of tiers did not outweigh these negative aspects, and, therefore NMFS will base dynamic allocation of IBQ shares on customized share percentages for each vessel, not tiers.

Comment 8 noted that the combined effect of the proposed IBQ measures that focus on the Gulf of Mexico – that is the Gulf of Mexico designation of IBQ and the associated rules -would not function when there is very low fishing effort in the Gulf of Mexico. The specific concern stated was that vessels may have insufficient IBQ allocations to satisfy the minimum IBQ requirements as well as account for any bluefin catch, and that vessels would not lease IBQ allocation to other vessels. A severely constrained or non-functioning IBQ program in the Gulf of Mexico would directly impact the ability for vessels to fish and earn income. NMFS agrees that under conditions of very low fishing effort in the Gulf of Mexico, the IBQ Program may not function as designed. Therefore, NMFS has modified the final rule to include a low share threshold that enables temporary relaxation of certain GOM-specific accounting rules, while maintaining an overall cap on catch in the Gulf.

Comment 6 noted that a bluefin quota ‘set-aside’ should be created to provide a source of IBQ shares and allocations for vessels that are new entrants to the fishery. In

response, NMFS has added to the 2006 Consolidated HMS FMP framework provisions and related regulations the authority to establish such a set aside, if needed, through a future rulemaking.

Comment 22 noted that the Longline category should be included in the reallocation of Purse Seine quota, because pelagic longline vessels rely on Purse Seine category quota for leasing under the IBQ Program and would be impacted by decreased availability of IBQ allocation to lease with elimination of the Purse Seine category. A commenter stated that increased IBQ allocations to active pelagic longline vessels under the proposed IBQ share alternative will not make up for the loss of quota currently available from the Purse Seine category. NMFS agrees with this statement, having confirmed it through additional analyses for the Final Amendment 13/FEIS. Based on this and other considerations, the final rule includes the Longline and Trap categories in the reallocation of Purse Seine category quota.

Comment 27 noted public concerns about some of the General category subquota alternatives that were not preferred, varied views on how to modify the subquotas. For example, one commenter noted that modification of the current subquota periods into 12 equal subquota periods (Alternative G2a), would adversely affect the participation and finances of vessels, depending upon the location of the vessels. Another commenter did not support extending the January through March subquota period until the end of April (Alternative G2b) because such a change would result in negative economic consequences later in the year. NMFS acknowledges that there are potential trade-offs associated with each of the alternatives analyzed, but notes that the bluefin fishery is highly dynamic, fishing permits are open access, and price fluctuations do not show a strong pattern during the year. After considering public comment and information from recent years, NMFS believes that existing General category subquota periods continue to be appropriate, given fish availability, fishing effort, and bluefin landings during the

different subquota time periods, and thus provide fair and equitable fishing opportunities. Thus, the final rule makes no changes to those subquota periods.

Comment 31 noted that the implementation of the proposed retention limit of 10 bluefin for the Harpoon category, which applies to large medium and giant fish (combined), would result in lost fishing opportunity and unharvested bluefin quota, and that therefore NMFS should not implement the measure. NMFS disagrees that the harpoon retention limit would result in lost fishing opportunity. Based on past data, the retention limit would affect relatively few vessels. In 2019 only 2 percent of Harpoon category trips landed 10 or more bluefin. NMFS has added to the final rule the ability to adjust the limit inseason to between 5 and 10 fish, in order to provide a means with which to influence rates of catch, lengthen the fishing season, and optimize fishing opportunities and resultant revenues.

Section 604(a)(4) of the RFA requires Agencies to provide an estimate of the number of small entities to which the rule would apply. For RFA compliance purposes, NMFS established a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS code 11411). SBA has established size standards for all other major industry sectors in the United States, including the scenic and sightseeing transportation (water) sector (NAICS code 487210, for-hire), which includes charter/party boat entities. SBA has defined a small charter/party boat entity as one with average annual receipts (revenue) of less than \$8.0 million. NMFS considers all HMS permit holders to be small entities because average annual receipts are less than \$11 million for commercial fishing or \$8 million for charter/party boat entities. Regarding those entities that would be directly affected by the measures implemented by this final rule, the average annual revenue per active pelagic longline vessel in 2017 is estimated to be \$307,422 based on 88 active vessels, which is well below the NMFS small business size standard for commercial fishing businesses of

\$11 million. In 2019, there were 280 Atlantic Tunas Longline category permits, and 67 vessels were actively fishing based on logbook records. In examining the trends of overall fleet-wide revenues in The Three-Year Review, NMFS found that the average annual revenue per vessel has been relatively stable. Thus, while Final Amendment 13 does not update the revenue estimate for 2019, based on information that NMFS has on the fishery, revenue per vessel in 2019 would have been well below \$11 million.

Other non-pelagic longline HMS commercial fishing vessels typically earn less revenue than pelagic longline vessels, and each HMS Charter/Headboat typically earns much less than \$8 million annually. Thus, all of these vessels would also be considered small entities. The other (non-Atlantic Tunas Longline) commercial measures implemented by this final rule apply to 2,721 General category permit holders, 3,769 Charter/Headboat permit holders, 20 Harpoon category permit holders, and 34 seafood dealers that purchase bluefin (based on 2019 data).

NMFS has determined that the final rule measures will not likely directly affect any small organizations or small government jurisdictions defined under the RFA, nor will there be disproportionate economic impacts between large and small entities.

Section 604(a)(5) of the RFA requires Agencies to describe any new reporting, record-keeping and other compliance requirements. This final rule contains revised or new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). *See* FRFA in Final Amendment 13 at section 7.4 for further details. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated below (see Paperwork Reduction Act).

Under section 604(a)(6) of the RFA, Agencies must describe the steps to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the measures adopted in the final rule and why the agency rejected each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities. These elements are summarized below. The full text of the Final Regulatory Flexibility analysis is contained in the Final Amendment 13/FEIS, Chapter 7.

*Modifications to IBQ Share Eligibility, Distribution and Allocation Methods*

Alternative A1, the No Action Alternative, would make no changes to the current method of determining IBQ share eligibility, and the distribution of IBQ allocations, including regional designations. Although this alternative would not result in any changes in the economic impacts to small entities associated with the IBQ Program under Amendment 7, the costs and inefficiencies associated with the current method of share determination would continue. Specifically, there would continue to be the inefficiency associated with annual IBQ allocations that are neither used to account for bluefin catch, nor leased to other shareholders. Alternative A1 would not meet objective 4 of this Amendment. For these reasons, this alternative was rejected.

Alternative A2 is composed of four sub-alternatives with annual, dynamic determination methods for allocating IBQ shares based on different criteria for defining the pool of recently active vessels. In making annual determinations, NMFS would use a recent 36-month period of relevant, best available data. Public comments supported use of a measure of fishing effort, rather than equal shares, because the pelagic longline fleet is very diverse in terms of fishing effort. The current IBQ Program has 136 shareholders. Under the sub-alternatives, there would be 91 defined shareholders based on the total number of vessels that submitted VMS bluefin reports from 2017 through 2019. The sub-

alternatives would reduce dissatisfaction among active fishery participants that results from the current IBQ Program, under which a relatively large number of permit holders who are not active receive annual IBQ allocations. While the FRFA estimates numbers of vessels that would have larger or smaller IBQ share percentages, any changes in IBQ shares are short term, as IBQ shares will be determined annually using the most recent three years of relevant, available data. Economic costs associated with reduced allocations would only be realized if shareholders need to lease IBQ allocation to account for bluefin catch in excess of their allocations. Shareholders may have a slightly reduced ability for business planning due to the potential annual variability in share percentages. However, they would be aware that a substantive change in their amount of fishing effort may result in slight changes in the share percentage in the following year. Any adverse impacts on a shareholder could be partially mitigated through leasing IBQ allocation, recognizing that there are costs associated with leasing. The FRFA anticipates that the leasing market is likely to continue to function well, with a price similar to or lower than recent prices, because under the sub-alternatives, most vessel allocations would increase.

Sub-Alternative A2a would define IBQ shareholders annually based on the relative number of hooks fished as the measure of fishing effort. The FEIS estimates that sixty-five vessels would have larger share percentages and twenty-six would have smaller share percentages compared to the No Action Alternative. Under dynamic determination of shares based on hooks, active vessels generally would be distributed more IBQ allocation per vessel than under the No Action Alternative (with the exception of shareholders in the first quartile). However, public comment strongly supported the use of sets instead of hooks or designated species landings, and it is more difficult to quantify the number of hooks than the number of sets. Therefore, this alternative was rejected.

Sub-Alternative A2b (preferred in Final Amendment 13 and implemented in final rule) defines IBQ shareholders based on the relative number of pelagic longline sets as

the measure of fishing effort. For valid participants in the Deepwater Horizon Oceanic Fish Restoration Project, a proxy amount of sets will be added to a vessel's history during the period of its participation in the Project, in order to ensure there are no negative impacts associated with their voluntary participation in that project. The proxy will be based upon the average number of sets made by IBQ shareholders' vessels that did not participate in the Project during the period that participants fished under the Project. For most active IBQ shareholders, who are small business entities, the overall economic impacts of Sub-Alternative A2b would be minor and beneficial. The FRFA estimates that sixty-one vessels would have larger share percentages and thirty vessels would have smaller share percentages compared to the No Action Alternative. Overall there would be a net increase in IBQ allocation value. Sixty-one vessels would be in a better economic position with respect to the amount of IBQ allocation distributed to them in association with their IBQ share (expressed in terms of potential lease costs avoided, or leasing benefits accrued). The average pounds of IBQ allocation gained would be 2,696 with a range of between 43 and 7,490 pounds. Using a weighted average cost per pound of leased IBQ allocation from 2017 through 2019 of \$1.70, the average lease value of IBQ allocation gained would be approximately \$4,582 per shareholder with a range of \$74 to \$12,732. For the thirty vessels with smaller IBQ allocations, the average lease value of IBQ allocation lost would be approximately \$3,492 per shareholder with a range of \$87 to \$7,302. Under dynamic allocation based on sets, vessels are generally distributed more IBQ allocation than under the No Action Alternative (with the exception of shareholders in the first quartile). There were public comments supporting this alternative. NMFS prefers this alternative as it provides a standardized, uniform method for determining IBQ shares for a geographically diverse fleet with a range of vessel sizes and fishing strategies. In addition, NMFS can determine the number of sets annually, in a timely manner, using a single data source.



Sub-Alternative A2c (preferred in Draft Amendment 13) would define IBQ shareholders based upon the total amount by weight of each individual permitted vessel's designated species landings relative to the total amount of designated species landings by pelagic longline fleet, as the measure of fishing effort. Participants in the Deepwater Horizon Oceanic Fish Restoration Project would have their fishing effort represented by the use of a proxy amount of landings used in the calculation of their IBQ shares, in order to ensure that there are no negative impacts associated with their voluntary participation in that project. For most active IBQ shareholders, who are small business entities, the economic impact of this alternative would be positive, and the overall economic impacts would be minor beneficial. The FRFA estimates that 56 vessels would have would have larger share percentages and thirty-five vessels would have smaller share percentages when compared to the No Action Alternative. Overall, there would be a net increase in IBQ allocation value. Public comments noted concern with not including certain species as designated species and noted that there is diversity in the pelagic longline fleet with regard to fishing strategy and species fished and landed. The exclusion of dolphin and wahoo from the list of designated species affected the IBQ share percentages of eight vessels in the analyses. Compared to the IBQ share percentages that they would have received if dolphin and wahoo were included, four vessels increased in share percentage and four vessels decreased.

Under dynamic allocation based on designated species landings, vessels generally would be distributed more IBQ allocation than under the No Action Alternative (with the exception of shareholders in the first quartile). However, given variations in fishing effort within the fleet, concern about creating incentives to capture lower value fish and potentially increasing waste of fish, complexities of administering this approach, and other public comments, this alternative was rejected.

Alternative A3 would have distributed IBQ allocation using the same formula used in Amendment 7, but instead of using data during the period from 2006 through 2012, the alternative would define eligible vessels as those that reported making at least one set using pelagic longline gear (based on logbook data, as in Amendment 7) from 2016 through 2018, and the relevant catch data used to designate IBQ shareholders to one of three tiers would also be based on 2016 through 2018. The number of tiers (three) would remain the same (high, medium, and low), but the IBQ share percentages would be higher for all tiers. The net result under this alternative would be some permit holders would have a larger IBQ share percentage and other permit holders would have a smaller IBQ share percentage when compared to the No Action Alternative. The number of IBQ shareholders would be reduced from 136 to 99, and reduce dissatisfaction among fishery participants that results from the current regulations under which a relatively large number of permit holders who are not active, receive an annual IBQ allocation because they are IBQ shareholders (with a permitted vessel). This alternative was rejected as the preferred alternative because it would only partially achieve the objective that IBQ shares distributed to inactive shareholders be redistributed to active vessels, because the share determination is static (*i.e.*, a one-time determination). Because the alternative is not dynamic, over time the distribution of IBQ shares and subsequent IBQ allocation among vessels may not be aligned with the active vessels.

#### *Modifications to Rules Closely Linked to IBQ Allocations*

Alternative B1, the No Action Alternative regarding Gulf of Mexico (GOM) and Atlantic (ATL) designated share determination, would result in the continuation of the current IBQ shareholders, associated share percentages, and regional designations (35 percent of the total Longline category quota designated as GOM, and 65 percent designated as ATL). Vessels that currently do not have GOM designated IBQ allocation but would like to fish in the Gulf of Mexico would need to lease GOM IBQ allocation.

The costs associated with vessels leasing GOM designated IBQ allocation would continue. Vessels that do not have any shares of GOM designated IBQ would not gain any additional flexibility, and the alternative would not provide the authority for NMFS to reduce the cap on GOM designated IBQ. For these reasons, this alternative was not preferred.

Alternative B2 would eliminate regional designations in conjunction with maintaining a maximum amount of bluefin catch from the Gulf of Mexico (35 percent of the Longline category quota). The alternative would facilitate fishing opportunities in the Gulf of Mexico for vessels currently with only ATL designated IBQ, and may result in increased revenue for such vessels. For vessels that already fish exclusively in the Gulf of Mexico, with all or most of their IBQ allocation designated as GOM, this alternative may have adverse economic impacts. Such vessels that currently have GOM designated IBQ allocation may face increased competition for fishing grounds or markets due to any increased fishing effort in the Gulf of Mexico, or face a smaller market for leasing their GOM allocation to other vessels. Elimination of the regional designations would likely result in increased uncertainty in the fishery. The alternative would not provide the authority for NMFS to reduce the cap on GOM designated IBQ. For the above reasons, this alternative was not selected as the preferred alternative.

Alternative B3, implemented by this final rule, will annually modify regional GOM and ATL designations as part of the dynamic allocation of IBQ shares; cap bluefin catch from the Gulf of Mexico (35 percent of Longline category quota or IBQ shares and resultant allocations); allow for reduction of the cap based on established criteria used for inseason and annual adjustments to quota; and maintain existing accounting rules for regional IBQ allocations unless a GOM low shares threshold is triggered. Regional designations annually would be based on the location of vessels' pelagic longline fishing activity using a recent 36-month period of relevant, best available data, and thus, GOM

designated shares could be lower than the GOM cap (35 percent default or lower).

Regarding the potential for NMFS to decrease the maximum percentage of GOM designated IBQ shares, if the maximum amount of GOM designated IBQ shares were reduced compared to the No Action level (*e.g.*, down to between 27 percent and 33 percent of the total IBQ shares), there would likely be no practical impact because the recent levels of catch of bluefin from the Gulf of Mexico have been very low. This alternative would provide a reasonable amount of flexibility for vessels to fish in the Gulf of Mexico.

The final rule adds a low GOM designated shares threshold. A public comment expressed the concern that the potential for declining effort in the Gulf of Mexico could result in a total percentage share and allocation of GOM IBQ so low that it improperly constrains the fishery. In order to prevent serious constraints in the functioning of the IBQ Program in the Gulf of Mexico under conditions of very low fishing effort, this final rule provides: if the total amount of IBQ shares that are designated as GOM are 5 percent or less of the total IBQ allocations (ATL plus GOM designated shares), NMFS will suspend the requirement to account for bluefin caught in the Gulf with GOM IBQ allocation, and use GOM IBQ allocation to satisfy the minimum IBQ requirement under the quarterly accountability rules. If the threshold is triggered, overall, the economic impacts are expected to be minor and beneficial, due to the increased flexibility for vessels currently without GOM designated IBQ shares and subsequent allocation. More specifically, there could be several types of impacts on small entities as a result of implementing the threshold provision: Those associated with vessel owners that have ATL designated IBQ shares (likely with home ports in the Atlantic); impacts on vessel owners with GOM designated IBQ shares (likely with home ports in the Gulf of Mexico), and those impacts that may result from a reduced percentage of total IBQ shares that are designated as GOM (if the amount of GOM designated shares, based on location of

fishing effort (landings) exceeds the level of the cap). If triggered, this measure will provide increased flexibility for vessels that currently have ATL designated IBQ shares because the dynamic annual definition of shares and regional designations would enable a vessel to receive annual shares with a GOM regional designation as a result of fishing with pelagic longline gear in the Gulf of Mexico during the previous year (instead of needing to lease GOM designated IBQ allocation annually). Historical fishery participants in the Gulf of Mexico will continue to receive GOM designated IBQ shares based on their level of activity (in the Gulf of Mexico). If the number of vessels fishing in the Gulf of Mexico increased, there may be minor short-term adverse economic impacts to those entities due to increased competition. However, based on the few vessels with home ports in the Atlantic that have fished in the Gulf of Mexico during the past few years, the potential for any adverse economic impact on vessels with home ports in the Gulf of Mexico is very low.

Preferred Alternative B4 is the No Action Alternative with respect to the Northeast Distant Gear Restricted Area (NED) rules. The economic impacts of the preferred alternative with respect to the NED rules will be neutral because there will be no changes to the relevant rules. Data associated with vessels fishing in the NED will be included as part of the formula defining IBQ shares, and vessels fishing in the NED do not have to use IBQ allocation to account for bluefin catch until after the 25-mt NED quota is utilized. Vessels that fish in the NED would continue to be able to fish there with no impact on the associated IBQ shares.

Alternative B5 would not include NED fishing activity as part of the data used in calculating IBQ Allocations. This alternative would have minor adverse economic impacts on vessels that fish in the NED because their fishing effort in the NED would not be reflected in their IBQ share percentage. Depending upon the specific amount of fishing effort, a vessel may receive a lower IBQ share percentage if tiers are used to

assign IBQ shares. Nine vessels fished in the NED during 2016 through 2018. The NED fishery is unique and highly variable, and therefore only a few vessels fish there intermittently. If a vessel fished in the NED during a particular year, their share percentage may be reduced during subsequent years as a result, whether or not any bluefin were caught during that year, and whether or not the vessel chooses to fish in the NED during subsequent years. If NED fishers receive a lower IBQ share percentage relative to their total fishing effort than other vessels, this may put them at a competitive disadvantage. Disadvantaging vessels that fish in the NED may alter the costs and incentives for vessels to fish in the NED, and have an adverse long-term impact on the fishery as a whole due to the underutilization of swordfish. Therefore, this alternative was not selected as the preferred alternative.

#### *Sale of IBQ Shares*

Preferred Alternative C1 would continue the current regulations under which no sale of IBQ shares is allowed. This alternative is expected to have minor beneficial economic impacts. There is little need for Atlantic Tunas Longline category permit holders to accumulate additional IBQ shares, because for most permit holders, annual allocations combined with a minimal amount of leasing is likely to be sufficient for permit holders to account for bluefin catch. Continued prohibition on sale of IBQ shares would reduce uncertainty in the IBQ allocation leasing market in both the short term and long term, which would be beneficial to the IBQ Program overall.

Alternative C2 would allow sale of IBQ shares and have some beneficial and some adverse impacts, with the net socioeconomic impacts being minor adverse. Sale of IBQ shares provides Atlantic Tunas Longline category permit holders an alternative means of participating in the IBQ leasing market that enables management of their IBQ allocation and business planning on a longer time scale than a single year. Permit holders may be able to save money through a single IBQ share transaction instead of via annual

IBQ allocation lease transactions, a beneficial impact. On the other hand, allowing sale of IBQ shares would introduce uncertainty in the IBQ allocation leasing market, which is otherwise robust as described in the Three-Year Review, and could have an adverse impact on the IBQ Program overall. There is no demonstrated need for Atlantic Tunas Longline category permit holders to accumulate additional IBQ shares over multiple years, because for most permit holders, annual allocations combined with a minimal amount of leasing is likely to be sufficient for permit holders to account for bluefin catch. Furthermore, allowing sale and accumulation of IBQ shares beyond a single year would not be consistent with the dynamic allocation alternatives, as it would remove the ability for NMFS to allocate shares annually among active vessels based on recent fishing effort. Therefore, this alternative was not selected as the preferred alternative.

*Cap on IBQ Shareholder Percentage or IBQ Allocation Use*

Sub-Alternative D1a, the No Action Alternative, would not place a cap on the amount of IBQ shares owned. This alternative is expected to have neutral economic impacts on small entities. The IBQ Program has been functioning under these regulations since 2015, and there have been no reported or observed issues relating to excessive accumulation of IBQ shares. In 2015 through 2019, the highest level of IBQ share ownership by one entity was between five and six percent of total IBQ shares, and this percentage remained the same throughout that time period. However, it is possible that future conditions in the fishery will change. Regardless of the likelihood of accumulation of IBQ shares, this alternative would not prevent future accumulations of shares by entities and was therefore not selected as the preferred alternative.

Sub-Alternative D1b, which would cap the accumulated sum of IBQ shares owned by a single entity at seven percent, is expected to have minor adverse economic impacts on small entities. Under the allocation method described in the preferred 'A' alternatives, the maximum amount of IBQ shares that a single entity would own on an

annual basis would be between six and seven percent of total shares. However, there is the possibility that entities could have business plans to acquire additional shares or purchase additional permits to increase their IBQ shares in the short-term that would be above a seven-percent cap, in which case there could be short-term minor adverse economic impacts. If an entity owned many vessels and had a relatively large amount of fishing effort (under the dynamic allocation alternatives), it is possible that a seven percent share cap would result in a disproportionately low percentage share of bluefin that could affect their ability to fish for their target species, and prevent increases in lawful fishing activity. By limiting the number of Atlantic Tunas Longline category permits an entity could own (outside of the limit discussed above at § 635.4(l)(2)(iii)), or limiting the amount of annual IBQ shares an entity could receive (or buy, under Alternative C2), the seven-percent cap could in turn limit the amount of fishing activity and target species landings of vessel or business, potentially preventing that business from increasing activity. For these reasons, Sub-Alternative D1b could have long-term adverse economic impacts. For the reasons stated, this alternative was not selected as the preferred alternative.

Preferred Sub-Alternative D1c, implemented by this final rule, will cap the amount of IBQ shares owned at 25 percent, and is expected to have neutral economic impacts. In 2015 through 2019, the highest level of IBQ share ownership by one entity was between five and six percent of total IBQ shares, and this percentage remained the same throughout that time period. Under the allocation method described in the preferred ‘A’ alternatives, the maximum amount of IBQ shares that a single entity would own on an annual basis would be between six and seven percent of total shares. If this trend continues where the maximum percent ownership remains stable over time, implementing a cap at 25 percent would not impact the fleet. This cap level would allow flexibility in entities’ business planning to acquire more shares, by acquiring additional



Atlantic Tunas Longline category permits. Implementing a 25-percent cap to prevent acquisition of excessive IBQ shares would prevent a single entity from controlling an excessive portion of the market, would address potential concerns among vessel owners, and accumulation of shares by a single entity and reduce any associated uncertainty, which would be a minor, beneficial socioeconomic impact.

Sub-Alternative D1d would cap the amount of IBQ shares owned at 50 percent, and is expected to have neutral economic impacts in the short term. Although this cap level would allow flexibility in entities' business planning to acquire more shares, by acquiring additional Atlantic Tunas Longline category permits, in the long term, Sub-Alternative D1a could have direct minor adverse economic impacts, if the high cap level of 50 percent is insufficient to prevent acquisition of excessive IBQ shares, allowing a single entity to control an excessive portion of the market. Therefore, this alternative was not selected as the preferred alternative.

Sub-Alternative D2a (No Action), which would not cap the amount of IBQ allocation *leased or used*, is expected to have neutral economic impacts on small entities. The IBQ Program has been functioning under these regulations since 2015, and there have been no reported or observed issues relating to excessive accumulation of IBQ allocation. The highest amount of IBQ allocation that a single entity held in a given year, including leased allocation, was 6.5 percent, 12.3 percent, and 8.8 percent of the total annual allocation (*i.e.*, the Longline category bluefin quota) in 2015, 2017, and 2019, respectively. During the development of Amendment 13 in spring 2022, NMFS became aware of concerns regarding recent, high bluefin landings in a portion of the pelagic longline fishery. NMFS considers this to be an unusual event and not reflective of how the IBQ Program has functioned overall. The IBQ Program was designed to provide ample flexibility for vessel owners to lease IBQ allocation in the amounts that they need to account for bluefin catch, maintain an IBQ allocation balance that satisfies the

minimum IBQ allocation requirements, and maintain an IBQ allocation balance that addresses the potential risk/need to account for future catch of bluefin. Furthermore, another measure implemented by this final rule, which sets a cap on IBQ share ownership at 25 percent (Sub-Alternative D1c) will prevent an excessive accumulation of IBQ shares over time. Leasing of IBQ allocation occurs on an annual basis and expires at the end of each calendar year, therefore there is no long-term concern about excessive accumulation of allocation via leasing. In addition, the preferred alternatives under the IBQ allocation alternatives (A alternatives) are designed to update and more closely align the distribution of IBQ shares and resulting allocation with the current fishing activity and need for IBQ allocation of the pelagic longline fleet, which could reduce the likelihood that entities would seek to lease additional allocation.

Sub-Alternative D2b would establish a cap on the amount of IBQ allocation an entity may lease or use at 25 percent. Although the level of this cap would be larger than the highest amount of IBQ allocation that a single entity held in a given year, it is possible that it would constrain the ability of a vessel to account for bluefin catch. A limit on how much IBQ allocation an entity can lease could cause some permit holders to become needlessly risk averse and decrease their fishing activity and, consequently, target species landings. Concerns about targeting bluefin may be better addressed through another regulatory mechanism. For these reasons, this alternative was not selected as the preferred alternative.

#### *Adjustments to other aspects of the IBQ Program*

Sub-Alternative E1a (No Action), which would make no changes to the dealer reporting requirements implemented by Amendment 7, would have direct, minor adverse economic impacts because it requires vessel operators and dealers to collaborate in submitting information that is also supplied independently by the vessel operators by way of VMS. The requirement to verify information by submitting it in two different reporting

systems can be frustrating for fishermen. During the time-period collecting two data streams, NMFS was able to verify information that was collected and determine that VMS was the best approach for submitting a single stream of dead discard data. The requirement for fishermen to submit a personal identification number (PIN) when dealers entered landings data was also frustrating and time consuming for fishermen and dealers alike since fishermen were frequently either not available when dealers entered the data, or did not have access to their PIN. Fishermen chose to provide their PIN to dealers which allowed the data to be entered, but did not provide the data verification that was the objective of the original requirement. Therefore, this alternative was not selected as the preferred alternative.

Preferred Sub-Alternative E1b implemented by this final rule modifies dealer reporting requirements for IBQ Program, and will have minor, beneficial economic impacts for dealers since they will be relieved of a reporting requirement (dead discards) and are no longer required to collaborate with fishermen for landings data entry. The removal of the PIN collaboration will reduce frustration for both fishermen and dealers and thus reduce labor costs with this task. Instead of being required to coordinate with the dealer to provide a PIN in conjunction with a bluefin landing, a pelagic longline fisherman will be informed via an automated email from the Catch Shares Online System when dealers enter a landing transaction into the computer system and a landing is accounted for in their vessel's account.

Sub-Alternative E2a, regarding electronic monitoring (EM) (the No Action Alternative), would continue the current requirement that EM hard drives be submitted after each trip using pelagic longline gear. This alternative would maintain the current requirements for shipping hard drives. Currently vessel owners or operators must mail hard drives to NMFS after each fishing trip. When compared to the preferred alternative, this would maintain a higher cost burden by requiring transactions after each trip. This

would also maintain a higher burden in terms of time. Operators would have to spend time pulling, packaging, and shipping hard drives after each trip, instead of after every other trip. Therefore, this alternative was not selected as the preferred alternative.

Preferred Sub-Alternative E2b implemented by this final rule will require that the vessel operator mail the hard drives at the completion of every two trips, instead of after each pelagic longline fishing trip. This alternative will have a minor beneficial economic impact by reducing the costs and time associated with mailing EM hard drives. This measure will reduce the frequency of hard drive shipments and reduce the number of transactions by half. Considering the high transaction average of 34 shipments per year, this would reduce the high average to 17 shipments. Each active vessel would still ship at least 1 hard drive per year, as NMFS would require any data recorded in a given year be submitted to NMFS prior to the next fishing year. Assuming a shipping cost of \$20 per transaction, this reduction in shipping frequency would save operators an average of \$120 per year. Reducing shipping frequency also saves vessel operators additional time and logistics, by only having to pull, package, and ship hard drives after every other trip. The time savings provided by this alternative are difficult to quantify, as vessel operators' shipping methods will influence the amount of time saved, however this would provide a minor beneficial impact by providing time-savings to the vessel operators. For these reasons, this alternative was selected as the preferred alternative.

Sub-Alternative E3a, regarding the EM Program (the No Action Alternative), would not clarify the current procedures regarding EM camera installation and would not provide NMFS with any additional authority regarding installation of hardware on vessels. Vessel operators would continue to operate as they have since implementation of the EM program, thus economic impacts are neutral. This alternative was rejected because it would not facilitate improvements in the accuracy of the EM data, and would have indirect, minor and adverse ecological impacts.

Through this final rule (Preferred Sub-Alternative E3b), NMFS clarifies that it may require installation of permanent or semi-permanent hardware (boom or telescoping device) in order to mount and install EM video cameras at locations on vessels as necessary to obtain optimal views, and that NMFS, working in conjunction with the vessel owner/operator, may make relatively minor modifications to the vessel structure to mount cameras in locations that provide required views of the vessel and adjacent areas. If installation of hardware is needed, the economic impacts of modifying the camera installation and placement would be minor adverse for the affected, small entities, due to the estimated cost of approximately \$1,000 per vessel, unless agency funding were to be available. Vessel crew would be required to extend, lower, or raise the boom mounted camera during fishing activities if needed. Additional logistics required may represent an increased time burden and a slight increase in the complexity of their fishing operation. Overall however, this time burden would only be a couple of minutes to extend, lower, or raise at the start and end of each fishing trip. Crew may also be required to access the camera during the trip in order to clean the lens. The process of cleaning the lens may be more difficult if the camera is mounted on a boom. Although this alternative has associated costs as described above, it would also increase the likelihood of improved data collection, and have indirect, minor, and beneficial ecological impacts. Data that is more robust is likely to provide ecological benefits in the long-term. Therefore, this alternative was selected as the preferred alternative.

Sub-Alternative E4a, the No Action Alternative (no additional fish handling protocols or requirements for measuring grids) for electronic monitoring, would have neutral economic impacts and no labor or equipment costs to vessel operators. This alternative was not selected as the preferred alternative because it would not facilitate improved data collection and would have minor adverse ecological impacts.

Preferred Sub-Alternative E4b implemented by this final rule will require more specific fish handling procedures and the installation/placement of a measuring grid on deck, in view of one of the cameras. This alternative will have minor adverse impacts as it would slightly increase costs in terms of the time required to process fish, or costs associated with a measurement tool such as a printed processing carpet or painted grid on the deck. The crew will need to modify their fish handling procedures to place all fish on the grid. Although there will be minor costs associated with this alternative, there will be an associated increase in the likelihood of improved data collection and long-term minor ecological benefits.

Sub-Alternative E5a (No Action) would make no changes to the current regulations, under which there is no cost recovery for the IBQ Program, and would therefore have a neutral economic impact. This alternative was not selected as the preferred alternative, because the Magnuson-Stevens Act requires a cost recovery program for a limited access privilege program.

Sub-Alternative E5b, implemented by this final rule, is preferred because it is consistent with the Magnuson-Stevens Act requirement to have a cost recovery program. Under this alternative, NMFS would not charge a fee in years where the collection program costs exceed estimated recovered costs. When a fee is charged, permit holders would incur up to a three-percent fee on any sale of bluefin caught by pelagic longline gear under the IBQ Program. This would have minor, adverse economic impacts on Atlantic Tunas Longline category permit holders that land bluefin.

*Modifications to the Purse Seine category management measures and other category quota allocations*

Sub-Alternative F1a (No Action) would maintain the current mathematical method of subtracting 68 mt from the U.S. baseline quota to account for Longline

category then applying codified allocation percentages for the bluefin categories. The economic impacts would be neutral. This alternative was not selected, because it would maintain the current complex method of calculating quota allocations. In contrast, Sub-Alternative F1b was selected to be implemented by this final rule because it will simplify the process: it revises the category allocation percentages to reflect the annual 68-mt allocation to the Longline category. Sub-Alternative F1b is expected to have neutral economic impacts. However, if the U.S. quota were to increase in the future, there may be minor, positive long-term socioeconomic impacts for Longline category participants because the category would be allocated slightly more quota than under the No Action alternative. In the event of a decrease in U.S. quota, the socioeconomic impacts would be minor negative for the Longline category. For other categories, socioeconomic impacts would be minor negative if there is a U.S. quota increase, and minor positive if there is a quota decrease.

Alternative F2 would eliminate the Purse Seine category and redistribute that category's quota to other quota categories under a variety of options (sub-alternatives). Sub-Alternative 2a (No Action Alternative) would maintain all aspects of the current quota allocation (with the exception of other quota allocation alternatives considered in Sections G, H, and I, regarding the General and Harpoon categories) and Purse Seine category regulations. The Purse Seine category would continue to receive quota based on activity level, and could either fish or trade that quota via the IBQ system. There would likely continue to be a large annual shift of Purse Seine category quota to the Reserve category (required under the regulations), that could be redistributed via inseason action. The economic impacts of this alternative would be neutral. This alternative was not selected because the uncertainty and unused quota associated with the current regulations would continue.

Sub-Alternative F2b, being implemented by this final rule, will discontinue the Purse Seine category and reallocate quota upon implementation. This sub-alternative, and Sub-Alternatives F2c1 and F2c2, only address the timing of discontinuation of the Purse Seine category. Impacts associated with quota reallocation are discussed under the F3 reallocation alternatives of which Sub-Alternative F3a, discussed below, is the preferred alternative. The impacts from the set of alternatives for discontinuance and reallocation (*e.g.*, F2b and F3a) are considered additive.

Sub-Alternative F2b will have moderate adverse direct economic impacts to Purse seine category participants compared to the status quo. Under this measure implemented by this final rule, quota allocations will no longer be distributed to Purse Seine category participants, so neither fishing for bluefin nor leasing via the IBQ system will be allowed after the effective date of this Amendment 13 final rule. The economic impacts are estimated based on the loss of potential revenue from these two activities. Purse Seine category participants last landed fish from 2013 through 2015, are not currently economically dependent upon bluefin landings, and not expected to engage in fishing for bluefin in the future. Using leasing data from 2013 – 2019, NMFS estimates a loss of \$38,391 per year category-wide or \$7,678 per participant from this sub-alternative. This sub-alternative was selected because elimination of the inactive Purse Seine category immediately would provide immediate benefits to the active bluefin categories. Although there would be a loss in potential income from leasing IBQ allocation, NMFS has concluded that, in view of the long-term absence of active fishing (despite trying to create incentives under Amendment 7 for purse seine vessels to remain active in the fishery), the elimination of the Purse Seine category will best contribute to achieving optimum yield and ensuring the greatest overall benefit to the nation. Promoting commercial and recreational fishing under sound conservation and management principles and achieving,



on a continuing basis, optimum yield from a fishery are key purposes of the Magnuson-Stevens Act. *See* comment and response 24 for further explanation.

Sub-Alternative F2c would discontinue the Purse Seine category and reallocate quota at a future (sunset) date, *i.e.*, the end of Year 2 after Amendment 13 is implemented. Sub-Alternative F2c1 would allow leasing and fishing until the sunset date, while Sub-Alternative F2c2 would only allow leasing. Economic impacts for both sub-alternatives would be moderate and adverse, but in addition, Sub-Alternative F2c2 would result in potential, lost opportunity to fish for bluefin and associated potential revenue losses. The most reasonably likely estimate of Purse Seine category future fishing activity is 0 mt landings since the category has not fished since 2015. This alternative was not selected because there is no justification to delay the benefits associated with discontinuation of the Purse Seine category.

Alternative F3 would reallocate the Purse Seine category quota proportionally to all other quota categories. The preferred Sub-Alternative F3a would apply Longline category increase to *all* areas, while Sub-Alternative F3b would only allow the Longline category increase to be fished in the Atlantic (not the Gulf of Mexico). Economic impacts for Sub-Alternative F3a, which is implemented by this final rule, will be moderate and beneficial with estimated increases in revenue for the commercial quota categories that will receive the redistributed quota after the Purse Seine category is terminated. The Draft Amendment 13/DEIS did not prefer including the Longline category in the reallocation. After considering public comment and conducting additional analyses, NMFS decided to include the Longline category, given impacts to the IBQ leasing market as a result of elimination of Purse Seine category quota and inactive pelagic longline vessels (due to annual dynamic allocations) as sources for leasing bluefin quota. Active vessels in the IBQ program in the past have relied, in a large part, on Purse Seine category bluefin quota as the source for leasing IBQ. Including the Longline category in the reallocation

increases the likelihood of maintaining a successful IBQ leasing market in the future (including new entrants). The Longline category will continue to benefit from a robust IBQ leasing market resulting from additional IBQ. Annual revenue increases for other categories resulting from Sub-Alternative F3a are estimated as follows: \$1,689,758 for the General category, \$131,548 for the Harpoon category, and \$93,204 for the Reserve category, resulting in a combined total of \$1,914,510. The incidental Trap category is unlikely to see any annual revenue increase given the total amount in its quota is *de minimis* and any landings are rare. Total revenue was also estimated for the Reserve category, because quota from that category could be used to augment one of the commercial categories via inseason action, at some point during the fishing year.

When Sub-Alternative F3a is combined with Sub-Alternative F2b (immediate disbursement), there will be moderately beneficial economic impacts on fishery participants due to increased bluefin quota and associated revenue. Net impacts (*i.e.*, economic impacts to all categories combined) are also beneficial, since the estimated annual revenue loss to the Purse Seine category for leasing would be \$0.15 million annually, which equals a net increase in revenue of approximately \$2.15 million annually. Revenue loss associated with purse seine leasing rather than fishing was used to calculate net value because a leasing only scenario is the most likely scenario that would occur, since Purse Seine category participants have not fished since 2015, but have been actively leasing quota through 2019. This sub-alternative was selected because it will provide economic benefits to the active bluefin categories.

Economic impacts for Sub-Alternative F3b (reallocation to all categories but Longline category could not use additional bluefin quota in the Gulf of Mexico) would be moderate and beneficial, and include estimated increases in revenue for the directed quota categories that received the redistributed quota. When combined with Sub-Alternative F2b (immediate disbursement), economic impacts for Sub-Alternative F3b

would be moderately beneficial for participants in all quota categories, except for pelagic longline vessels that fish in the Gulf of Mexico. As explained above under Alternative F3, the final rule includes the Longline category in the reallocation because of impacts of eliminating the Purse Seine category on the IBQ leasing market. Longline category vessels fishing in the Gulf of Mexico have relied in part on leasing Purse Seine IBQ quota, so allowing use of reallocated quota there is needed in order to address IBQ leasing market changes. Thus, Sub-Alternative F3b is not selected. When Sub-Alternative F3b is combined with Sub-Alternative F2c (reallocate the Purse Seine category quota after a 2-year sunset period), short term economic impacts would be neutral. Combining F3b with F2c, which would delay reallocation, was not selected because there is no justification to delay the benefits associated with discontinuation of the Purse Seine category.

Alternative F4 would redistribute Purse Seine category quota to the directed categories only. Economic impacts for Alternative F4 would be moderate and beneficial for directed categories, and moderate and negative for incidental categories. The beneficial impacts include increases in revenue for the commercial quota categories that receive the redistributed quota after the Purse Seine category is terminated. However, impacts on the Longline category would be moderate and negative because bluefin quota from the Purse Seine category would be neither reallocated to the Longline category, nor available for leasing. As explained above under Alternative F3, active vessels in the IBQ program in the past have relied, in a large part, on Purse Seine category bluefin quota as the source for leasing IBQ. When combined with Alternative F2b (immediate disbursement) (Preferred), economic impacts for Alternative F4 would be moderately beneficial for directed category participants receiving quota. Revenue for leasing rather than fishing was used to calculate net value because it is the most likely scenario, since Purse Seine category participants have not fished since 2015, but have been actively

leasing quota through 2019. It is difficult to quantify the negative aspects of the impact of this alternative on the IBQ Program. The costs associated with leasing are likely to increase, and if fishing behavior is constrained by a poorly functioning IBQ leasing market, there could be reductions in target species landings. This alternative was not selected given the IBQ leasing market concern.

When combined with Sub-Alternative F2c (1 and 2), which would reallocate the Purse Seine category quota after a 2-year sunset period, Alternative F4's short term economic impacts would be neutral. The long-term impacts would be moderate and beneficial. There would be economic gains for the categories receiving quota when the sunset of the Purse Seine category occurs after two years, and losses for the Purse Seine category at that time. This alternative was not selected given the IBQ leasing market concern and because there is no justification to delay the benefits associated with discontinuation of the Purse Seine category.

#### *Modifications to General category subquota periods and/or allocations*

Alternative G1, the preferred No Action Alternative, will not make any modifications to the General category subquota periods and/or allocations and thus has neutral economic impacts. The status quo subquotas assigned to the time periods generally reflect the historical catch patterns from the 1980s and 1990s as well as formalization of the winter fishery. Recent annual bluefin landings under the General category quota have approached or exceeded the base and adjusted General category quotas (*i.e.*, they were 149 and 101 percent of base and adjusted quotas, respectively, for 2017; 168 and 96 percent of base and adjusted quotas for 2018; and 147 and 104 percent base and adjusted quotas for 2019). Exceedances of base quotas reflect inseason quota transfers from the Reserve and Harpoon categories. Although ex-vessel prices have been variable over the last several years, high landings relative to quota have led to a modest total increase in ex-vessel gross revenues in 2016 through 2019. Revenues for the

General category were \$9.7 million in 2016 and 2018, at the highest level since 2002.

While NMFS agrees that the General category fishery has changed over time, NMFS determined, based on analyses in Draft Amendment 13/DEIS and the Final Amendment 13/FEIS (*see* Section 4.7.4), that the current structure of the fishery continues to provide equitable fishing opportunities, as explained further in the response to Comment 27. This alternative was selected because the current subquota periods and allocations, in combination with NMFS' authority for inseason management of the fishery, facilitate the catch of bluefin quota and provide equitable opportunities for participation and catch of bluefin. The current regulations are achieving the objectives of the fishery management plan as explained in the FEIS Section 4.7.4.

Sub-Alternatives G2a, G2b, G3a, G3b, and G3c analyzed modifications to the subquota periods or size of the subquota percentages. Sub-Alternative G2a would modify the General category time periods to 12 equal months. Sub-Alternative G2b would modify General category time periods to extend the January through March subquota time period through April 30. Sub-Alternative G3a would modify the General category allocation percentage to increase the January through March amount. Sub-Alternative G3b would modify General category allocation percentages and increase the September and the October through November amounts and decrease the June through August amount. Sub-Alternative G3c would modify the General category allocation percentages, and is directly associated with Alternatives F5 and F6 (discontinue Purse Seine category fishery and reallocate quota). Any increases of General category quota resulting from Alternatives F5 and F6 would be applied to the September and the October through November subquota periods. For all of these sub-alternatives, based upon the changes in subquota amounts, changes in revenue were estimated using changes in potential landings and the price associated with those landings.

For these General category fishery sub-alternatives there would be some increases in revenue for some subquota periods and declines in revenue for other subquota periods. Overall, the impacts were expected to be moderate, and beneficial or adverse, depending on quota and fish prices in the various time periods. The changes in revenues in these General category subquota allocation alternatives are strongly subject to availability of fish and fishing conditions during the subquota time periods. Further, the potential gross revenue estimates are based on price assumptions and market dynamics that are uncertain. Lastly, unused quota may be adjusted (added) within a calendar year from one period to the next, any unused quota from the adjusted January through March period would return to the June through August period and onward if not used completely during that period. These sub-alternatives were not selected, because they would not meaningfully increase the equity of the fishery among participants or optimize bluefin landings. In the context of the highly variable bluefin fishery and the current regulatory structure, the analyses do not demonstrate the benefits of any of these alternatives over the preferred alternative.

#### *Modifications to the Angling category trophy fishery*

The impacts of Alternative H1, the No Action Alternative, would be neutral, but continue the current structure (defined trophy areas and associated quotas) of the trophy fishery. The RFA is not applicable to anglers as they are not “small entities” (*i.e.*, small businesses, organizations or governmental jurisdictions) for RFA purposes. There is no sale of tunas by Angling category participants, thus no economic costs or impacts with this alternative. For charter vessels, which sell fishing trips to recreational fishermen, for those north of the northern mid-Atlantic states, including New England states, the perceived lower opportunity to land a trophy bluefin would continue. Therefore, this alternative was not selected.

Preferred Alternative H2, implemented by this final rule, will modify the current Angling category northern trophy subquota areas and allocations specified at § 635.27(a)(1), by dividing the northern area into two zones: north and south of 42° N. lat. (off Chatham, MA); these newly-formed areas will be named the Gulf of Maine trophy area and the Southern New England trophy area, respectively, as shown in the FEIS. The net result will be that the Trophy quota will be divided among four geographic areas (in the Atlantic and Gulf of Mexico) and each area would receive the same amount of quota (*i.e.*, the Angling category trophy quota would be divided equally four ways).

There will be minor, beneficial social impacts (and economic impacts for charter vessels) to a small number of vessels in the new zone north of 42° N. lat. (the Gulf of Maine trophy area) resulting from the small amount of fish that would be allowed to be landed. The perception of greater fairness among northern area participants also represents beneficial, social impacts. HMS Charter/Headboat permitted vessel owners and operators have commented over the years that the ability to attract customers with the opportunity to retain a trophy bluefin is important, even if few are ultimately landed. NMFS also received comments about the importance of trophy opportunities for tournaments as well. For these reasons, this alternative was selected.

#### *Modifications to other handgear fishery regulations*

Preferred Sub-Alternative I1a (No Action) will maintain the current authorized gears applicable to the Atlantic Tunas permit categories, and make no changes to the relevant gear regulations. For example, participants in the HMS Charter/Headboat category will still be authorized to use rod and reel, handline, bandit gear, and green-stick, as well as speargun for recreational catch of non-bluefin tunas only, and the General category will be authorized to use harpoon, rod and reel, handline, bandit gear, and green-stick. This alternative was selected because there is currently equitable flexibility to use various gear types among the open access bluefin permit categories.

Sub-Alternative I1b would add harpoon gear as an authorized gear for the HMS Charter/Headboat category vessels. The addition of this gear would only apply to vessels with the ability to carry six or fewer passengers for hire. Harpoon gear could be used on commercial trips by Charter/Headboat permitted vessels with the commercial sale endorsement. This alternative would have minor, beneficial economic impacts for those vessels that have success in harpooning bluefin that may be available at the water's surface. This alternative was not selected, because it would have relatively minor benefits, and public comments expressed concerns about the safety of the alternative. Further, although the Charter/Headboat category may not fish with harpoon gear, the permit category has the flexibility to fish under commercial or recreational HMS regulations, which is not allowed under other permit categories.

Sub-Alternative I1c would eliminate harpoon as gear authorized for use by General category permitted vessels. This alternative was not selected because it would result in minor, adverse impacts: it would reduce opportunity for vessels with General category permits that fish with harpoon gear and reduce flexibility and efficiency in catching the General category quota. Further, the use of harpoon gear by General category permitted vessels does not significantly reduce fishing opportunities for rod and reel fishermen.

Sub-Alternative I2a (No Action) would maintain the current Harpoon category retention limit regulations: an unlimited number of giant bluefin per day (measuring 81" curved fork length or greater), and two large medium bluefin (73" - < 81") per vessel per day unless the large medium bluefin retention limit is increased by NMFS through an inseason adjustment to a maximum of four per vessel per day. This alternative was not selected because it would not optimize the use of the harpoon category quota by limiting retention of high numbers of bluefin on a single trip.



Sub-Alternative I2b would set an overall Harpoon category daily retention limit of 10 commercial-sized bluefin per day or trip (*i.e.*, the combined limit of large medium (73" - < 81") and giant (81" or greater) would be 10 fish), and would maintain the current regulations regarding retention of large medium bluefin (73" - < 81") (*i.e.*, the range of two (default) to four fish, adjustable through inseason action). This alternative was not selected because, although it would optimize the use of the harpoon category quota by limiting retention of high numbers of bluefin on a single trip, it would not provide parity with most of the other bluefin regulations regarding retention limits. Specifically, there would be no authority for NMFS to reduce the 10 fish retention limit to address changing conditions or circumstances in the fishery.

Sub-Alternative I2c, implemented by this final rule, will set a default overall daily limit of 10 commercial-sized bluefin per day or trip (*i.e.*, the combination of large medium (73" - < 81") and giant (81" or greater) would be 10 fish). Secondly, this measure will authorize NMFS to set the combined daily retention limit over a range of 5 to 10 fish (adjustable through inseason action). For example, if NMFS were to set the Harpoon category limit of combined large medium and giant bluefin to nine (via inseason action) (and a limit of two large medium fish were in effect), then no more than seven giant bluefin could be kept in that same day or trip, such that the total does not exceed nine fish. This alternative was selected because it will optimize the use of the Harpoon category quota by limiting retention of high numbers of bluefin on a single trip, and provide a mechanism to lower the retention limit inseason to respond to changing conditions or circumstances in the fishery.

Sub-Alternative I3a (No Action) will maintain the June 1 start date and November 15 closure date for the Harpoon category season. A June 1 start date for the Harpoon category means that the Harpoon and General category seasons start at the same time. The Harpoon and General category seasons starting together will facilitate enforcement

and business planning, and provide greater certainty to participants regarding opportunities, participation/effort, and potential impact on market prices. Participants will continue to have the potential to catch the same percentage of the quota and earn the equivalent share of total ex-vessel revenues. To the extent that bluefin may be available to harpoon gear prior to June 1, opportunities to harpoon fish may be lost, both from the catch of the fish and the potential for better ex-vessel prices when there may be fewer fish on the market, particularly from the General category, which will not begin until June 1. To the extent that opportunities could extend deeper into the summer, more Harpoon category participants could benefit. For these reasons, this alternative was selected.

Sub-Alternative I3b would lengthen the season for the Harpoon category by implementing an earlier start date of May 1 for the fishery instead of the current start date of June 1. The November 15 closure date would remain the same. The overall impacts would be both minor adverse and beneficial. The relative magnitudes of the adverse and beneficial impacts are unknown. Starting the Harpoon category season in advance of the General category season (which would remain at June 1) would result in an adverse impact due to increased uncertainty for enforcement and business planning, and reduced certainty to General category participants regarding opportunities, participation/effort, and potential impact on market prices. A beneficial impact would accrue to Harpoon category vessels. This alternative would increase the likelihood of Harpoon category participants being able to catch the full Harpoon category quota and thus would be minor, and beneficial. An increase in optimum yield may result from a potential increase in the geographic and temporal distribution of landings. Increases in positive economic impacts would depend on the availability of bluefin to the fishery from the beginning of May until the Harpoon category quota (base or adjusted, as applicable) is reached. This alternative was not selected because of the adverse impacts anticipated and the relative magnitudes of the adverse and beneficial impacts are unknown.

Sub-Alternative I4a (No Action) would maintain the current requirement that gives permit holders 45 days to change their Atlantic Tunas or HMS permit category as long as they have not landed a bluefin. This alternative was rejected because continuation of the administrative restriction without a clear corresponding benefit is not warranted.

Sub-Alternative I4b, implemented by this final rule, will extend the ability to change permit categories from 45 days to the full fishing year as long as the vessel has not landed a bluefin. For a subset of the impacted permit holders, this alternative will be very beneficial, if an incorrect permit is obtained that prohibits a commercial fisherman from selling fish or a charter/headboat fisherman from taking paying passengers (*e.g.*, HMS Angling permit). This alternative was selected because it will provide additional flexibility for permit applicants to correct mistakes, while maintaining the condition that no bluefin have been landed (and therefore precluding misuse of such flexibility).

Sub-Alternative I5a (No Action) would make no changes to the current regulations concerning green-stick gear. Vessels authorized to fish with pelagic longline gear would not be permitted to retain bluefin caught with green-stick gear. The economic impacts of the No Action Alternatives would be minor and adverse, as a result of maintaining the current regulations that preclude a pelagic longline vessel from retaining bluefin caught on green-stick gear. This alternative was not selected because it would not allow a pelagic longline vessel to retain bluefin incidentally caught by greenstick gear, and therefore not minimize discarding.

Sub-Alternative I5b, would amend retention and reporting requirements for bluefin caught with green-stick gear by vessels with Atlantic Tunas Longline category permits, to allow the retention of one bluefin per trip (73" or greater CFL), provided that pelagic longline gear is not on board, and that vessels comply with additional regulations (*i.e.*, VMS set reports, HMS logbook requirements, IBQ program requirements) applying to such trips. This alternative was rejected because although it would allow retention of a

bluefin caught by green-stick gear, the restriction that green-stick gear cannot be used if pelagic longline gear is onboard may limit the flexibility for fishermen to adapt fishing strategies to the conditions on a particular trip, and reduce the ability of those vessels to maximize their opportunity to catch yellowfin. Green-stick gear selection by fishermen targeting yellowfin could maximize economic returns and efficiency, or reflect adherence to specific requirements if fishing under the DWH OFRP in the Gulf of Mexico.

Sub-Alternative I5c, implemented by this final rule, amends retention and reporting requirements for bluefin caught with green-stick gear (by vessels with Longline category permits), to allow the retention of one bluefin per trip (of 73” or greater) and with additional regulations (*i.e.*, VMS set reports, HMS logbook requirements, IBQ program requirements) applying to such trips. This measure allows both green-stick and pelagic longline gear on the vessel at the same time. In comparison to the No Action Alternative, this measure will have minor, beneficial economic impacts because a vessel would be able to retain a legal-sized bluefin that may otherwise be discarded dead due to a *de facto* prohibition on bluefin retention. Retention of such fish would reduce waste, augment revenue, and reduce the frustration associated with regulatory discarding. Allowing the use of green-stick gear while pelagic longline gear is on board is intended to provide vessel operators flexibility to employ fishing strategies with multiple gear types to optimize their business in a highly dynamic fishery. Green-stick gear selection by fishermen targeting yellowfin could maximize economic returns and efficiency, or reflect adherence to specific requirements if fishing under the DWH OFRP in the Gulf of Mexico. For these reasons, this alternative was selected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity

compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared, and posted to the Amendment 13 website. Copies of this final rule are available from the Office of Sustainable Fisheries, and the guide is available upon request (see ADDRESSES).

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (PRA).

As part of Amendment 13, this final rule contains measures that eliminate or modify existing reporting, record-keeping, or other compliance requirements that require PRA filing, as described below. This final rule will change the existing requirements for collection-of-information under OMB Control Number 0648-0372 by modifying the VMS reporting requirement for vessels issued an Atlantic Tunas Longline permit that are fishing with green-stick gear. Such vessels will be required to submit a VMS set report for each green-stick retrieval that interacts with bluefin and report information on the location and the numbers, length range, and disposition of bluefin within 12 hours (caught using green-stick gear, in addition to the VMS reports for pelagic longline sets). This requirement is expected to increase the number of responses by only 18 per year, because of the low number of vessels expected to use green-stick gear (up to 3 vessels), and the low rate of bluefin incidental catch. This requirement will not change the total number of respondents and would have a *de minimis* impact on total costs. The public reporting burden for bluefin catch and effort is estimated to average 5 minutes per individual response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This final rule will also modify other existing requirements for the collection of information under OMB Control Number 0648-0372. The requirement for vessels fishing with purse seine gear to report bluefin information through VMS is eliminated, because this final rule eliminates the provisions that allow fishing with purse seine gear. The removal of this requirement will reduce the total burden by six hours and reduce the estimated burden cost by two thousand dollars. The final rule changes the existing EM requirements for pelagic longline vessels by requiring vessel owners to pay for specific required EM system modifications: hardware for the installation of rail video cameras and installation of a measuring grid on deck. These payment requirements will not affect the reporting burden hours for vessel operators. Finally, the final rule changes the existing EM requirements for pelagic longline vessels by requiring vessel owners to mail in their EM hard drives after every other trip, unless the hard drive is at full capacity after the first trip, as opposed to the current requirement to do so after every trip.

This final rule revises the existing requirements for collection-of-information under OMB Control Number 0648-0040 by removing two aspects of the dealer reporting requirements for the IBQ Program. First, this final rule eliminates the current requirement that vessel operators or owners confirm that the landing report information entered into the IBQ system by the dealer is accurate, by entering the PIN associated with the vessel account. Secondly, this final rule removes the requirement that any pelagic longline vessel owner or operator who discarded dead bluefin is required to also enter dead discard information from the trip by coordinating with the dealer and entering that trip's dead discard information into the online IBQ system via the dealer account. The vessel operator will continue to be required to report dead discard information via VMS while at sea. NMFS estimates that the number of small entities subject to these requirements includes participants in the Longline category. As of March 2020, a total of 280 Atlantic Tunas Longline category limited access permits were issued. It is likely that the number

of vessels that will actually be affected by these requirements would not be larger than 60 vessels. Since 2017, no more than 58 different pelagic longline vessels have landed bluefin.

This final rule changes the existing requirements for the collection-of-information under OMB Control Number 0648-0677 by adding cost recovery requirements for Atlantic Tunas Longline permit holders that land bluefin. Annually, NMFS will estimate its incremental costs associated with the IBQ Program (including costs associated with the cost recovery program) and the total ex-vessel value of bluefin harvested under the Program, and notify the public whether a cost recovery fee will be charged for the year. If NMFS determines an annual cost recovery fee is warranted, NMFS will send bills to permit holders that sold bluefin to dealers. Permit holders would be billed based on the ex-vessel value of the bluefin sold by that vessel, and would pay the cost recovery fee through the Catch Shares On-line Program website and the associated pay.gov link. NMFS estimates that the number of small entities subject to new cost recovery requirements will include all Atlantic Tuna Longline permit holders than landed bluefin, which is not likely to exceed 60 vessels, based on 2017 through 2019 IBQ Program data. The public reporting burden for cost recovery is estimated to average 15 minutes per individual response, including the time for logging onto the relevant online website, reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden is estimated to be 15 hours.

NMFS invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find these particular

information collections by using the search function and entering either the title of the collection or the OMB Control Number 0648-0372, 0648-0040, 0648-0677.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

## **List of Subjects**

### **50 CFR Part 600**

General provisions for domestic fisheries, Magnuson-Stevens Act provisions, National standards, Regional fishery management councils.

### **50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: September 23, 2022.

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**Samuel D. Rauch, III**

Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are amended as follows:

## **PART 600 – MAGNUSON-STEVENSON ACT PROVISIONS**

1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

### **§ 600.725 [Amended]**

2. In § 600.725, amend the table in paragraph (v), under the heading “IX. Secretary of Commerce,” by removing and reserving the entry 1.H.

## **PART 635 – ATLANTIC HIGHLY MIGRATORY SPECIES**



3. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

4. In § 635.2:

a. Add in alphabetical order a definition for “BFT”;

b. Revise the definition of “CFL”;

c. Add in alphabetical order definitions for “Electronic Monitoring (EM) system” and “IBQ (individual bluefin quota)”;

d. Revise the definition of “Northeast Distant gear restricted area”; and

e. Add in alphabetical order a definition for “Vessel Monitoring Plan (VMP)”.

The additions and revisions read as follows:

#### **§ 635.2 Definitions.**

\* \* \* \* \*

*BFT* means Atlantic bluefin tuna as defined in § 600.10 of this chapter.

\* \* \* \* \*

*CFL (curved fork length)* means the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel (*i.e.*, in dorsal direction above caudal keel).

\* \* \* \* \*

*Electronic monitoring (EM) system* means a system of video cameras and recording and other related equipment installed on a vessel.

\* \* \* \* \*

*IBQ (individual bluefin quota)* refers to limited access privileges under the IBQ Program (§ 635.15), implemented for the management of Atlantic BFT incidentally caught by Atlantic Tunas Longline category LAP holders.

\* \* \* \* \*

*Northeast Distant gear restricted area (NED)* means the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00' N. lat., 60°00' W. long.; 55°00' N. lat., 60°00' W. long.; 55°00' N. lat., 20°00' W. long.; 35°00' N. lat., 20°00' W. long.; 35°00' N. lat., 60°00' W. long.

\* \* \* \* \*

*Vessel monitoring plan (VMP)* means an on-board, EM system reference document required by § 635.9(e)(1).

\* \* \* \* \*

5. In § 635.4, revise paragraphs (d)(1) and (2), remove paragraph (d)(5), and revise paragraph (j)(3).

The revisions read as follows:

**§ 635.4 Permits and fees.**

\* \* \* \* \*

(d) \* \* \*

(1) The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas, HMS Angling, HMS Charter/Headboat, or an HMS Commercial Caribbean Small Boat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit or permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, or Trap category of the

Atlantic Tunas permit, a valid HMS Charter/Headboat permit with a commercial sale endorsement, or an HMS Commercial Caribbean Small Boat permit.

\* \* \* \* \*

(j) \* \* \*

(3) A vessel owner issued an Atlantic Tunas permit in the General, Harpoon, or Trap category or an Atlantic HMS permit in the Angling or Charter/Headboat category under paragraph (b), (c), or (d) of this section may change the category of the vessel permit at any time during the fishing year, provided the vessel has not landed BFT during that fishing year as verified by NMFS via landings data.

\* \* \* \* \*

6. In § 635.5, revise paragraphs (a)(3) and (6) and (b)(2)(i)(A) to read as follows:

**§ 635.5 Recordkeeping and reporting.**

\* \* \* \* \*

(a) \* \* \*

(3) *BFT landed by a commercial vessel and not sold.* If a person who catches and lands a large medium or giant BFT from a vessel issued a permit in any of the commercial categories for Atlantic tunas does not sell or otherwise transfer the BFT to a dealer who has a dealer permit for Atlantic tunas, the person must contact a NMFS enforcement agent, as instructed by NMFS, immediately upon landing such BFT, provide the information needed for the reports required under paragraph (b)(2)(i) of this section, and, if requested, make the tuna available so that a NMFS enforcement agent or authorized officer may inspect the fish and attach a tag to it. Alternatively, such reporting requirement may be fulfilled if a dealer who has a dealer permit for Atlantic tunas affixes a dealer tag as required under paragraph (b)(2)(ii) of this section and reports the BFT as being landed but not sold on the reports required under paragraph (b)(2)(i) of this section. If a vessel is placed on a trailer, the person must contact a NMFS enforcement agent, or

the BFT must have a dealer tag affixed to it by a permitted Atlantic tunas dealer, immediately upon the vessel being removed from the water. All BFT landed but not sold will be accounted against the quota category according to the permit category of the vessel from which it was landed.

\* \* \* \* \*

(6) *Atlantic Tunas Longline category permitted vessels.* The owner or operator of a vessel issued, or that should have been issued, an Atlantic Tunas Longline category permit is subject to the VMS reporting requirements under § 635.69(e)(4) and the applicable IBQ Program and/or leasing requirements under § 635.15.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *Landing reports.* Each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each BFT received from a U.S. fishing vessel. Such reports must be submitted as instructed by NMFS not later than 24 hours after receipt of the BFT. Landing reports must include the name and permit number of the vessel that landed the BFT and other information regarding the catch as instructed by NMFS. When purchasing BFT from eligible IBQ Program participants, permitted Atlantic Tunas dealers must enter landing reports into the Catch Shares Online System established under § 635.15, not later than 24 hours after receipt of the BFT. The dealer must inspect the vessel's permit to verify that it is a commercial category, that the required vessel name and permit number as listed on the permit are correctly recorded in the landing report, and that the vessel permit has not expired.

\* \* \* \* \*

7. In § 635.9, revise paragraphs (a), (b)(2) introductory text, (c)(1)(ii), and (c)(6), add paragraph (c)(7), and revise paragraph (e) to read as follows:

**§ 635.9 Electronic monitoring.**

(a) *Applicability.* An owner and/or operator of a commercial vessel permitted or required to be permitted in the Atlantic Tunas Longline category under § 635.4, and that has pelagic longline gear on board, are required to have installed and maintain at all times during fishing trips, a fully operational EM system on the vessel, as specified in this section. Vessel owners and/or operators can contact NMFS or a NMFS-approved contractor for more details on procuring an EM system.

(b) \* \* \*

(2) Vessel owners and/or operators, as instructed by NMFS, may be required to coordinate with NMFS or a NMFS approved contractor to schedule a date or range of dates, and/or may be required to steam to a designated port for EM work on specific NMFS-determined dates. Such EM work may include, but is not limited to EM system installation, repair, or modifications; modifications to vessel equipment to facilitate installation or operation of EM systems, such as installation of a fitting for the pressure-side of the line of the drum hydraulic system; installation, repair or modification to a power supply or power switches/connections for the EM system; installation of additional lighting; or installation of mounting structure(s) for the camera(s) to provide views of areas and fish consistent with paragraphs (c)(1)(i) through (ii) of this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Video camera(s) must be in sufficient numbers (a minimum of two and up to four), with sufficient resolution (no less than 720p (1280 × 720)) for NMFS, the USCG, and their authorized officers and designees, or any individual authorized by NMFS to

determine the number and species of fish harvested. To obtain the views required in paragraph (c)(1)(i) of this section, at least one camera must be mounted to record close-up images of fish being retained on the deck at the haulback station, and at least one camera must be mounted to provide views of the area from the rail to the water surface, where the gear and fish are hauled out of the water. NMFS or the NMFS-approved contractor will determine the number and placement of cameras needed to achieve the required views, based on the operation and physical layout of the vessel.

\* \* \* \* \*

(6) *EM software*. The EM system must have software that enables the system to be tested for functionality and that records the outcome of the tests.

(7) *Standardized reference grid*. The vessel must have a standardized grid on deck in view of the haulback station camera(s) in such a way that the video recording includes an image of each fish on the grid in order to provide a size reference. The standardized grid may be on a removable mat or carpet that is placed on the deck before the fish are brought on board, or may be painted directly on the deck. The standardized reference grid must have accurate dimensions and grid line intervals as instructed and specified in the vessel's VMP by NMFS or the NMFS-approved contractor. The vessel owner and/or operator is responsible for ensuring compliance with the provided instructions and specifications and for ensuring accurate, straight, clear and complete grid lines with no missing, incomplete, blurry or smudged lines.

\* \* \* \* \*

(e) *Operation*. Unless otherwise authorized by NMFS in writing, a vessel described in paragraph (a) of this section must collect video and sensor data in accordance with the requirements in this section, in order to fish with pelagic longline gear.

(1) *Vessel monitoring plan.* The vessel owner and/or operator must have available onboard a written VMP for its system. At a minimum, the VMP must include: information on the locations of EM system components (including any customized camera mounting structure); contact information for technical support; instructions on how to conduct a pre-trip system test; instructions on how to verify proper system functions; location(s) on deck where fish retrieval should occur to remain in view of the cameras; specifications and other relevant information regarding the dimensions and grid line intervals for the standardized reference grid; procedures for how to manage EM system hard drives; catch handling procedures; periodic checks of the monitor during the retrieval of gear to verify proper functioning; and reporting procedures. The VMP will be updated, revised, and approved periodically by NMFS or the NMFS-approved contractor, and will include both signature and date indicating when the VMP was approved by NMFS or the NMFS-approved contractor. The VMP should minimize to the extent practicable any impact of the EM systems on the current operating procedures of the vessel, and should help ensure the safety of the crew. The vessel owner and/or operator must implement, and ensure that the vessel complies with, all of the requirements, specifications and protocols outlined in the VMP no later than 6 months after the date of approval of the VMP.

(2) *Handling of fish and duties of care.* The vessel owner and/or operator must ensure that all fish that are caught, even those that are released, are handled in a manner that enables the video system to record such fish, and must ensure that all handling and retention of BFT occurs in accordance with relevant regulations and the operational procedures outlined in the VMP. The vessel owner or operator must ensure that each retained fish is placed on the standardized reference grid in view of cameras in accordance with the operational procedures outlined in the VMP.

(3) *Additional duties of care.* The vessel owner and/or operator is responsible for ensuring the proper continuous functioning of all aspects of the EM system, including that the EM system must remain powered on for the duration of each fishing trip from the time of departure to time of return; cameras must be functioning and cleaned routinely; the hydraulic and gear sensors must be operational; the GPS signal must be functioning; and EM system components must not be tampered with.

(4) *Completion of trip(s).* Except when at capacity after one trip or otherwise stated by NMFS in writing, EM hard drives may be used to record up to two trips. Within 48 hours of completing a second fishing trip, or within 48 hours of completing one trip in the case where the hard drive does not have sufficient capacity for a second trip, the vessel owner and/or operator must mail the removable EM system hard drive(s) containing all data to NMFS or NMFS-approved contractor, according to instructions provided by NMFS. The vessel owner and/or operator is responsible for using shipping materials suitable to protect the hard drives (*e.g.*, bubble wrap), tracking the package, and including a self-addressed mailing label for the next port of call so replacement hard drives can be mailed back to the sender. Prior to departing on any trip, the vessel owner and/or operator must ensure an EM system hard drive(s) is installed that has the capacity needed to enable data collection and video recording for the entire trip. The vessel owner and/or operator is responsible for contacting NMFS or NMFS-approved contractor if they have requested but not received a replacement hard drive(s) and for informing NMFS or NMFS-approved contractor of any lapse in the hard drive management procedures described in the VMP.

\* \* \* \* \*

8. Revise § 635.15 to read as follows:

**§ 635.15 Individual bluefin tuna quotas (IBQs).**



(a) *General.* This section describes the IBQ Program. As described below, under the IBQ Program, NMFS will assign eligible Atlantic Tunas Longline category LAP holders annual IBQ shares and resulting allocations. IBQ allocations are required for vessels with Atlantic Tunas Longline category permits to fish with pelagic longline or green-stick gear. IBQ allocations may be leased by IBQ shareholders and Atlantic Tunas Longline category LAP holders using the Catch Shares Online System.

(b) *Eligibility*—(1) *IBQ shareholder.* An Atlantic Tunas Longline category LAP holder that fished using pelagic longline gear on at least one set (*i.e.*, deployment and retrieval) during a recent 36 month period is eligible to receive an annual IBQ share in accordance with paragraph (c) of this section and is considered an IBQ shareholder. In determining IBQ shareholders, NMFS will use data as described in paragraph (c) of this section. For an IBQ shareholder's vessel to be considered an "eligible vessel," the vessel must have been issued a valid Atlantic Tunas Longline category LAP when set(s) occurred during the relevant 36 month period. In circumstances where a LAP is transferred from one vessel to another during the relevant 36 month period, the eligible vessel(s) is that which deployed the pelagic longline sets.

(2) *New entrants.* New entrants to the fishery need to obtain an Atlantic Tunas Longline category LAP, as well as other required LAPs, as described under § 635.4(l), and would need to lease IBQ allocations per paragraph (e) of this section if the Atlantic Tunas Longline category LAP acquired was not eligible for an annual IBQ share.

(c) *Annual IBQ share determination.* During the last quarter of each year, NMFS will review the relevant 36 months of best available data to determine eligible IBQ shareholders and the number of pelagic longline sets legally made by each permitted, eligible vessel, and assign IBQ shares based on the criteria below. The 36 month time period is a rolling period that changes annually, and is selected by NMFS based on the availability of recent data and time required by NMFS to conduct determinations under

paragraphs (b) and (c) of this section. NMFS intends to include data from the majority of the year prior to the year for which shares are applied and the IBQ allocation distributed. The best available data as determined by NMFS may be a single data source such as VMS data, for which there is a relatively short time period from the time it is submitted by the vessel operator, and the time it can be used by NMFS; or the best available data may include other available data such as logbook, EM, or permit data, in order to accurately determine a vessel's eligibility status and shares. An IBQ shareholder does not need a valid LAP when NMFS makes annual IBQ share determinations, but NMFS will only distribute IBQ allocations to permitted vessels.

(1) *IBQ share calculations.* Annually, NMFS will calculate IBQ shares for each IBQ shareholder based upon the total number of each eligible vessel's pelagic longline sets during the relevant 36 month period, and the relative amount (as a percentage) those pelagic longline sets represent compared to the total number of pelagic longline sets made by all IBQ shareholders' eligible vessels. NMFS will only count one set per calendar day toward a vessel's total number of pelagic longline sets, and will only count a set if a vessel was issued a valid Atlantic Tunas Longline category LAP when the set occurred. The annual IBQ share percentage is used to calculate the annual IBQ allocation (see paragraph (d) of this section).

(2) *Proxy calculation for Deepwater Horizon Oceanic Fish Restoration Project participants.* For valid participants in this Project, the annual IBQ shares will be calculated as described in paragraph (c)(1) of this section, but in addition, a proxy amount of sets will be added to a vessel's history during the period of its participation in the Project. The proxy will be based upon the average number of sets made by IBQ shareholders' vessels that did not participate in the Project during the period that participants fished under the Project.

(3) *Regional designations of IBQ shares.* Annually, IBQ shares and resultant allocations will be designated as either “GOM” (Gulf of Mexico) or “ATL” (Atlantic), based upon the location (*i.e.*, in the Gulf of Mexico or Atlantic region) of sets included in the calculation under paragraph (c)(1) of this section. Subject to the GOM share cap described below, each region’s total shares and resultant allocations for the year will be based on the percentage of sets designated for the region compared to total sets. Per § 635.28(a)(1), NMFS will file a closure action when a region’s IBQ allocations have been reached or are projected to be reached. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2. If an IBQ shareholder’s vessel had fishing history in both the Gulf of Mexico and Atlantic region, it could receive both GOM and ATL shares.

(i) *GOM share cap.* The maximum amount of designated GOM IBQ shares among all IBQ shareholders is capped at 35 percent of the baseline Longline category quota. Based on the criteria and process under § 635.27(a)(7), NMFS may make an inseason or annual adjustment to reduce the default 35-percent cap for all or the remainder of a calendar year.

(ii) *Adjustment of GOM shares to match the GOM share cap.* If NMFS determines that the total amount of GOM-designated IBQ shares would be greater than the GOM share cap (default or adjusted), NMFS will reduce the total amount of GOM shares in order to equal the GOM share cap. The reduction in total GOM shares will be achieved through equal proportional reductions among all GOM shareholders. The ATL shares will be increased in an analogous manner, so that the total share percentages for the two regions add up to 100 percent. NMFS will notify affected shareholders of any reductions in their GOM shares or increases in ATL shares resulting from this

adjustment. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section.

(iii) *Low GOM-designated share threshold.* If NMFS determines that the total amount of GOM-designated IBQ shares is 5 percent or less of the total IBQ shares, NMFS will file an action with the Office of the Federal Register for publication that suspends for that year the requirement to account for BFT caught in the Gulf of Mexico with GOM-designated shares and resultant allocations (paragraph (f)(1) of this section) and the minimum GOM IBQ allocation requirement (paragraph (f)(2) of this section). NMFS will also notify IBQ shareholders of such action per paragraph (e) of this section. In this situation, IBQ shareholders' vessels could fish in the Gulf of Mexico during that year using ATL-designated IBQ allocations. Any vessels fishing in the Gulf of Mexico would still need to account for BFT catch and have the minimum IBQ allocation of 0.25 mt ww (551 lb ww) before departing on the first fishing trip in a calendar year quarter. Those vessels that fish in the Gulf of Mexico may be issued GOM IBQ shares in the following year per the regional designation of shares process described in paragraph (c)(3) of this section. BFT catch (landings and dead discards) from the Gulf of Mexico by pelagic longline vessels will be capped at the weight of BFT equivalent to the GOM share cap (see paragraph (c)(3)(i) of this section) in the applicable year. If this level of catch is reached, or projected to be reached, NMFS will prohibit fishing with pelagic longline gear in the Gulf of Mexico for the rest of the year pursuant to § 635.28(a)(1).

(d) *Annual IBQ allocations.* An annual IBQ allocation is the amount of BFT (whole weight) in metric tons corresponding to an IBQ shareholder's share percentage, distributed to their vessel to account for incidental landings and dead discards of BFT during a specified calendar year. NMFS will only distribute IBQ allocations when there is a valid Atlantic Tunas Longline category LAP associated with a vessel. Unless otherwise required under paragraph (f)(4) of this section, an IBQ allocation is derived by

multiplying the IBQ share percentage (calculated under paragraph (c)(1) of this section) by the baseline Longline category quota for that year. If the baseline quota is adjusted during the fishing year, the annual IBQ allocation may also be adjusted as specified in paragraph (e)(2) of this section.

(e) *Notification of IBQ shares and allocations, appeals, and adjustments.* During the last quarter of each year, NMFS will notify Atlantic Tunas Longline permit holders via electronic methods (such as an email) and/or letter to inform them of their IBQ shares, their IBQ allocations, and the regional designations of those shares and allocations for the subsequent fishing year; whether adjustments were made to GOM-designated shares due to the GOM shares cap; and whether the low GOM-designated share threshold has been triggered. This notification represents the initial administrative determination (IAD) for the permit holder's IBQ share and allocation. NMFS will also notify permit holders of any existing quota debt, and provide instructions for appealing the IAD. As of December 31, if an IBQ shareholder does not have a valid Atlantic Tunas Longline category LAP associated with a vessel due to a permit renewal or transfer, NMFS will issue IBQ allocation for the relevant fishing year if/when the permit renewal or transfer is completed and a valid LAP is associated with a vessel. IBQ shares, allocations, and regional designations may change as a result of the following circumstances, in which case NMFS will notify eligible IBQ recipients.

(1) *Appeals.* Appeals will be governed by the regulations and policies of the National Appeals Office at 15 CFR part 906. Per those regulations, Atlantic Tunas Longline Permit holders may appeal the IAD by submitting a written request for an appeal to the National Appeals Office within 45 days after the date the IAD is issued. NMFS will provide further instructions on how to submit a request for an appeal when it issues the IAD.

(i) *Items subject to appeal and adjustment.* A permit holder may appeal their: eligibility for IBQ shares based on ownership of an active vessel with a valid Atlantic Tunas Longline category permit; IBQ share percentage; IBQ allocations; and regional designations of shares and allocations. A permit holder may also appeal NMFS' determination of the number of pelagic longline sets legally made by its permitted vessel. However, an adjustment of GOM shares under paragraph (c)(3)(ii) of this section or inseason quota adjustment under paragraph (e)(3) of this section is not subject to appeal. Appeals based on hardship factors will not be considered. Consistent with most limited effort and catch share programs, hardship is not a valid basis for appeal due to the multitude of potential definitions of hardship and the difficulty and complexity of administering such criteria in a fair manner. NMFS may utilize BFT quota from the Reserve category for any adjustment needed due to an appeal.

(ii) *Supporting documentation for appeals.* NMFS permit records would be the sole basis for determining permit transfers, permit renewals, and the validity of permits. NMFS will only use the relevant 36 months of data described under paragraph (c) of this section to determine the numbers of pelagic longline sets made. NMFS will count only pelagic longline sets legally made when the permit holder had a valid permit. No other proof of sets or permit history will be considered. Photocopies of written documents are acceptable; NMFS may request originals at a later date. NMFS may refer any submitted materials that are of questionable authenticity to the NMFS Office of Law Enforcement for investigation into potential violations of Federal law.

(2) *Inseason quota transfers.* NMFS may transfer additional quota to the Longline category inseason as authorized under § 635.27(a), and in accordance with § 635.27(a)(7) and (8). NMFS may distribute the quota that is transferred inseason to the Longline category either to all IBQ shareholders or to all permitted Atlantic Tunas Longline category LAP vessels that are determined by NMFS to have any recent fishing activity in

the pelagic longline fishery. In making this decision, NMFS will consider factors for the subject and previous year such as the number of BFT landings and dead discards, the number of IBQ lease transactions, the average amount of IBQ leased, the average amount of quota debt, the annual amount of IBQ allocation, any previous inseason allocations of IBQ allocation, the amount of BFT quota in the Reserve category (at § 635.27(a)(6)(i)), the percentage of BFT quota harvested by the other quota categories, the remaining number of days in the year, the number of active vessels fishing not associated with IBQ share, and the number of vessels that have incurred quota debt or that have low levels of IBQ allocation. NMFS will determine if a vessel has any recent fishing activity based upon the best available information for the subject and previous year, such as logbook, vessel monitoring system, or electronic monitoring data. Any distribution of quota transferred inseason will be equal among eligible IBQ shareholders or active vessels, and include regional designations of IBQ allocations (see paragraph (c)(3) of this section).

(3) *Inseason quota adjustments.* NMFS may increase or decrease the baseline Longline quota on an inseason basis as authorized under § 635.27(a). When doing so, NMFS would apply each IBQ shareholder's share percentage to the amount of quota increase or decrease, and will notify IBQ shareholders of any resulting changes in their IBQ allocations. This adjustment is not subject to appeal under paragraph (e)(1)(i) of this section. Regional designations described in paragraph (c)(3) of this section will be applied to inseason quota distributed to IBQ shareholders, and subject to the applicable cap and other provisions under paragraph (c)(3) of this section.

(f) *Using IBQ shares and allocations.* Unless specified otherwise, IBQ shares and resultant allocations will be available for use at the start of each fishing year and expire at the end of each fishing year. IBQ shares and allocations issued under this section are valid for the relevant fishing year unless revoked, suspended, or modified or unless the Atlantic Tunas Longline category quota is closed per § 635.28(a).

(1) *Usage of GOM and ATL shares and allocations.* GOM shares and resultant allocations can be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in either the Gulf of Mexico or the Atlantic regions. ATL shares and resultant allocations can only be used to satisfy minimum IBQ allocation requirements under paragraph (f)(2) of this section, or to account for BFT caught with pelagic longline gear in the Atlantic region, unless the provisions of paragraph (c)(3)(iii) of this section are in effect. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter, and the Atlantic region includes all other waters of the Atlantic Ocean including fishing taking place in the NED defined at § 635.2.

(2) *Minimum IBQ allocation.* For purposes of this section, calendar year quarters start on January 1, April 1, July 1, and October 1.

(i) *First fishing trip in a calendar year quarter.* Before departing on the first fishing trip in a calendar year quarter, a vessel with a valid Atlantic Tunas Longline category LAP that fishes with or has pelagic longline or green-stick gear onboard must have the minimum IBQ allocation for either the Gulf of Mexico or Atlantic, depending on fishing location. The minimum GOM allocation for a vessel fishing in the Gulf of Mexico, or departing for a fishing trip in the Gulf of Mexico, is 0.25 mt ww (551 lb ww). The minimum ATL or GOM allocation for a vessel fishing in the Atlantic or departing for a fishing trip in the Atlantic is 0.125 mt ww (276 lb ww). A vessel owner or operator may not declare into or depart on the first fishing trip in a calendar year quarter with pelagic longline gear onboard unless the vessel has the relevant required minimum IBQ allocation for the region in which the fishing activity will occur.

(ii) *Subsequent fishing trips in a calendar year quarter.* Subsequent to the first fishing trip in a calendar year quarter, a vessel owner or operator may declare into or



depart on other fishing trips with pelagic longline gear onboard with less than the relevant minimum IBQ allocation for the region in which the fishing activity will occur, but only within that same calendar year quarter.

(3) *Accounting for BFT that were landed or discarded dead.* The following requirements apply to Atlantic Tunas Longline permit holders fishing with pelagic longline or green-stick gear regarding accounting for all BFT landings and dead discards from a vessel's IBQ allocation.

(i) *Catch deduction from IBQ allocations.* Except as provided under paragraph (f)(6)(i) of this section, for vessels fishing in the NED, all BFT landings must be deducted from the vessel's IBQ allocation at the end of each trip by providing information to, and coordinating with the dealer. Dead discards will be deducted from the vessel's IBQ allocation by the Catch Shares Online System, when the vessel operator reports dead discards through VMS as required under § 635.69(e)(4)(i).

(ii) *IBQ allocation balances.* If the amount of BFT landed and discarded dead on a particular trip exceeds the amount of the vessel's IBQ allocation or results in an IBQ balance less than the minimum amount described in paragraph (f)(2) of this section, the vessel may continue to fish, complete the trip, and depart on subsequent trips within the same calendar year quarter. The vessel must resolve any quota debt (see paragraph (f)(4) of this section) before declaring into or departing on a fishing trip with pelagic longline gear onboard in a subsequent calendar year quarter by acquiring adequate IBQ allocation to resolve the debt and acquire the needed minimum allocation through leasing, as described in paragraph (g) of this section.

(iii) *End-of-year IBQ transactions by dealers.* Federal Atlantic Tunas Dealer permit holders must comply with reporting requirements at § 635.5(b)(2)(i)(A). No IBQ transactions will be processed between 6 p.m. eastern time on December 31 and 2 p.m.

Eastern Time on January 1 of each year to provide NMFS time to reconcile IBQ accounts and update IBQ shares and allocations for the upcoming fishing year.

(4) *Exceeding an available allocation.* If the amount of BFT landed or discarded dead for a particular trip (as defined in § 600.10 of this chapter) exceeds the amount of IBQ allocation available to the vessel, the permitted vessel is considered to have a “quota debt” equal to the difference between the catch and the allocation.

(i) *Quarter-level quota debt.* A vessel with quota debt incurred in a given calendar year quarter cannot depart on a trip with pelagic longline gear onboard in a subsequent calendar year quarter until the vessel leases allocation or receives additional allocation (see paragraphs (e) and (g) of this section), and applies allocation for the appropriate region to settle the quota debt such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur (see paragraph (f)(2) of this section). For example, a vessel with quota debt incurred during January through March may not depart on a trip with pelagic longline gear onboard during April through June (or subsequent quarters) until the quota debt has been resolved such that the vessel has the relevant minimum quota allocation required to fish for the region in which the fishing activity will occur.

(ii) *Annual-level quota debt.* If, by the end of the fishing year, a permit holder does not have adequate IBQ allocation to settle its vessel's quota debt through leasing or additional allocation (see paragraphs (e) and (g) of this section), the vessel's allocation will be reduced in the amount equal to the quota debt in the subsequent year or years until the quota debt is fully accounted for. A vessel may not depart on any pelagic longline trips if it has outstanding quota debt from a previous fishing year.

(iii) *Association with permit.* Quota debt is associated with the vessel's Atlantic Tunas Longline permit, and remains associated with the permit if/when the permit is transferred or sold. At the end of the year, if an owner with multiple permitted vessels has

a quota debt associated with one or more vessels owned, the IBQ system will apply any remaining unused IBQ allocation associated with that owner's other vessels to resolve the quota debt.

(5) *Unused IBQ allocation.* Any IBQ allocation that is unused at the end of the fishing year may not be carried forward by a permit-holder to the following year, but would remain associated with the Longline category as a whole, and subject to the quota regulations under § 635.27, including annual quota adjustments.

(6) *The IBQ Program and the NED.* The following restrictions apply to vessels fishing with pelagic longline gear in the NED:

(i) *When NED BFT quota is available.* Permitted vessels fishing with pelagic longline or green-stick gear may fish in the NED, and any BFT catch will count toward the ICCAT-allocated separate NED quota, and will not be subject to the BFT accounting requirements of paragraph (f)(3) of this section, until the NED quota has been filled. Permitted vessels fishing in the NED must still fish in accordance with all other IBQ Program requirements, including the relevant minimum IBQ allocation requirements specified under paragraph (f)(2) of this section to depart on a trip using pelagic longline or green-stick gear.

(ii) *When NED BFT quota is filled.* Permitted vessels fishing with pelagic longline or green-stick gear may fish in the NED after the ICCAT-allocated, separate NED quota has been filled and must abide by all IBQ Program requirements. Notably, when the NED BFT quota is filled, the BFT accounting requirement of paragraph (f)(3) of this section is applicable. BFT catch must be accounted for using the vessel's ATL or GOM IBQ allocation, as described under paragraph (f)(1) of this section.

(g) *IBQ allocation leasing—(1) Eligibility.* The permit holders of vessels issued valid Atlantic Tunas Longline category LAPs are eligible to lease IBQ allocation to

and/or from each other. A person who holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not lease IBQ allocation.

(2) *Application to lease*—(i) *Application information requirements*. All IBQ allocation leases must occur electronically through the Catch Shares Online System, and include all information required by NMFS.

(ii) *Approval of lease application*. Unless NMFS denies an application to lease IBQ allocation according to paragraph (g)(2)(iii) of this section, the Catch Shares Online System will provide an approval code to the IBQ lessee confirming the transaction.

(iii) *Denial of lease application*. NMFS may deny an application to lease IBQ allocation for any reason, including, but not limited to: The application is incomplete; the IBQ lessor or IBQ lessee is not eligible to lease per paragraph (g)(1) of this section; the IBQ lessor or IBQ lessee permits is sanctioned pursuant to an enforcement proceeding; or the IBQ lessor has an insufficient IBQ allocation available to lease (*i.e.*, the requested amount of lease may not exceed the amount of IBQ allocation associated with the lessor). As the Catch Shares Online System is automated, if any of the criteria above are applicable, the lease transaction will not be allowed to proceed. The decision by NMFS is the final agency decision; there is no opportunity for an administrative appeal.

(3) *Conditions and restrictions of leased IBQ allocation*—(i) *Subleasing*. In a fishing year, an IBQ allocation may be leased numerous times following the process specified in paragraph (g)(2) of this section.

(ii) *History of leased IBQ allocation use*. The fishing history associated with the catch of BFT will be associated with the vessel that caught the BFT, regardless of how the vessel acquired the IBQ allocation (*e.g.*, through annual allocation or lease), for the purpose of any potential, future relevant regulations based upon BFT catch.

(iii) *Duration of IBQ allocation lease.* IBQ allocations expire at the end of each calendar year. Thus, an IBQ lessee may only use the leased IBQ allocation during the fishing year in which the IBQ allocation is applicable.

(iv) *Temporary prohibition on leasing IBQ allocation.* No leasing of IBQ allocation is permitted between 6 p.m. eastern time on December 31 of one year and 2 p.m. eastern time on January 1 of the next year. This period is necessary to provide NMFS time to reconcile IBQ accounts, and update IBQ shares and allocations for the upcoming fishing year.

(h) *Sale of IBQ shares.* Sale of IBQ shares is not permitted.

(i) *Changes in vessel and permit ownership.* In accordance with the regulations specified under § 635.4(l), a vessel owner that has an annual IBQ share may transfer their Atlantic Tunas Longline category LAP to another vessel that he or she owns or transfer the permit to another person. The IBQ share as described under this section would transfer with the permit to the new vessel, and remain associated with that permit for the remainder of that fishing year. Within a fishing year, when an Atlantic Tunas Longline category LAP transfer occurs (from one vessel to another), the associated IBQ shares are transferred with the permit, however IBQ allocation is not, unless the IBQ allocation is also transferred through a separate transaction within the Catch Shares Online System. A person that holds an Atlantic Tunas Longline category LAP that is not associated with a vessel may not receive or lease IBQ allocation.

(j) *Evaluation.* NMFS will conduct evaluations of the IBQ Program in accordance with Magnuson-Stevens Act requirements for Limited Access Privilege Programs (Section 303(c)(1)(G)).

(k) *Property rights.* IBQ shares and resultant allocations issued pursuant to this part may be revoked, limited, modified or suspended at any time subject to the requirements of the Magnuson-Stevens Act, ATCA, or other applicable law. Such IBQ

shares and resultant allocations do not confer any right to compensation and do not create any right, title, or interest in any BFT until it is landed or discarded dead.

(l) *Enforcement and monitoring.* NMFS will enforce and monitor the IBQ Program through the use of the reporting and record keeping requirements described under § 635.5, the monitoring requirements under §§ 635.9 and 635.69, enforcement of the prohibitions in § 635.71, and its authority to close the pelagic longline fishery specified under § 635.28.

(m) *Cost recovery program.* This program of fees is intended to cover costs of management, data collection and analysis, and enforcement activities directly related to and in support of the IBQ Program. This program applies to vessels issued an Atlantic Tunas Longline category LAP that harvested BFT under the IBQ Program. NMFS will undertake the process described in paragraphs (m)(1) through (5) of this section, on an annual basis.

(1) *Estimation of incremental cost.* NMFS will calculate the estimated incremental cost of the IBQ Program (*e.g.*, oversight, customer service, database/computer maintenance and other costs, electronic monitoring program, data monitoring, preparation of fleet communications, providing status reports to the HMS Advisory Panel, preparation of **Federal Register** documents, and enforcement related activities), including an estimate of the administrative and operational cost of implementing the cost recovery program.

(2) *Estimation of ex-vessel value of catch share species.* NMFS will calculate the ex-vessel value of BFT harvested under the IBQ Program using dealer data on the estimated average ex-vessel value price per pound (paid by the dealer to the vessel) and the total dressed weight of BFT sold to dealers.

(3) *Determination of fees.* NMFS will compare its incremental cost under paragraph (m)(1) of this section to the estimate of BFT ex-vessel value under paragraph

(m)(2) of this section to determine the total amount of fees that may be recovered. Fees shall not exceed 3 percent of the BFT ex-vessel value estimated under paragraph (m)(2) of this section. NMFS will determine the fee associated with each vessel that harvested BFT, based on the total dressed weight of BFT sold to dealers by a vessel, and the total amount of fees that may be recovered (fishery-wide). NMFS will not assess fees, if the amount of fees that may be recovered is similar to or less than the estimated cost of implementing the cost recovery program.

(4) *Notification of fees.* NMFS will file with the Office of the Federal Register for publication a notification of its determination on fees, and notify Atlantic Tunas Longline permit holders, specifying the fee amount owed, and instructions for payment through the Catch Shares Online System or other Federal payment system. Federally permitted vessels (Atlantic Tunas Longline permit holders) that sold BFT that do not pay the fee or are delinquent in payment would be subject to relevant enforcement penalties, including permit revocation.

(5) *Annual report.* NMFS will prepare a brief annual report, made available to the public, which summarizes relevant information including the estimation of recoverable costs, estimation of ex-vessel value of BFT, and determination of the cost recovery fee.

(n) *IBQ shares cap.* An individual, partnership, corporation or other entity (collectively, “entity” for purposes of this paragraph) that holds an Atlantic Tunas Longline category LAP may not hold or acquire more than 25 percent of the total IBQ shares or resultant IBQ allocations annually. The cap applies to the sum of IBQ shares or associated IBQ allocations an entity holds, regardless of whether the entity is associated with a single or multiple Atlantic Tunas Longline category permits.

9. In § 635.19, revise paragraph (b) to read as follows:

**§ 635.19 Authorized gears.**

\* \* \* \* \*

(b) *Atlantic tunas*. Primary gears are the gears specifically authorized in this section for fishing for, catching, retaining, or possessing Atlantic BFT and BAYS.

(1) *Atlantic BFT*. A person that fishes for, catches, retains, or possesses an Atlantic BFT may not have on board a vessel or use on board a vessel any primary gear other than those authorized for the specific permit category issued (Atlantic tunas or HMS permit categories) and listed here:

(i) *Angling category*. Rod and reel (including downriggers) and handline.

(ii) *Charter/headboat category*. Rod and reel (including downriggers), bandit gear, handline, and green-stick gear.

(iii) *General category*. Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.

(iv) *Harpoon category*. Harpoon.

(v) *Trap category*. Pound net and fish weir.

(vi) *Longline category*. Longline and green-stick gear.

(2) *BAYS*. Subject to paragraph (b)(1) of this section that applies to possession or retention of BFT or fishing for or catching BFT, a person may otherwise use the primary gears authorized for the Atlantic Tunas or HMS permit categories and listed here to fish for, catch, retain, or possess BAYS:

(i) *Angling category*. Speargun, rod and reel (including downriggers), and handline.

(ii) *Charter/Headboat category*. Rod and reel (including downriggers), bandit gear, handline, and green-stick gear are authorized for all recreational and commercial Atlantic tuna fisheries. Speargun is authorized for recreational Atlantic BAYS tuna fisheries only.

(iii) *General category*. Rod and reel (including downriggers), handline, harpoon, bandit gear, and green-stick gear.



(iv) *Harpoon category*. Harpoon.

(v) *Longline category*. Longline and green-stick gear.

(3) *HMS Commercial Caribbean Small Boat Permit*. A person issued an HMS Commercial Caribbean Small Boat permit may use handline, harpoon, rod and reel, bandit gear, green-stick gear, and buoy gear to fish for, retain, or possess BAYS tunas in the U.S. Caribbean, as defined at § 622.2.

\* \* \* \* \*

10. In § 635.21:

a. Revise paragraphs (c)(2)(iv) introductory text, (c)(5)(iii)(B), and (c)(5)(iii)(C) introductory text; and

b. Remove paragraph (e) and redesignate paragraphs (f) through (k) as paragraphs (e) through (j).

The revisions read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iv) In the NED at any time, unless persons onboard the vessel comply with the following:

\* \* \* \* \*

(5) \* \* \*

(iii) \* \* \*

(B) *Bait*. Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part, are limited, at all times, to possessing on board and/or using only

whole finfish and/or squid bait except that if green-stick gear is also on board, artificial bait may be possessed, but may be used only with green-stick gear.

(C) *Hook size and type.* Vessels fishing outside of the NED, as defined at § 635.2, that have pelagic longline gear on board, and that have been issued or are required to be issued a LAP under this part are limited, at all times, to possessing on board and/or using only 16/0 or larger non-offset circle hooks or 18/0 or larger circle hooks with an offset not to exceed 10°. These hooks must meet the criteria listed in paragraphs (c)(5)(iii)(C)(1) through (3) of this section. A limited exception for the possession and use of J-hooks when green-stick gear is on board is described in paragraph (c)(5)(iii)(C)(4) of this section.

\* \* \* \* \*

11. In § 635.22, revise paragraph (c)(1) to read as follows:

**§ 635.22 Recreational retention limits.**

\* \* \* \* \*

(c) \* \* \*

(1) The recreational retention limit for sharks applies to any person who fishes in any manner on a vessel that has been issued or is required to have been issued a permit with a shark endorsement, except as noted in paragraph (c)(7) of this section. The retention limit can change depending on the species being caught and the size limit under which they are being caught as specified under § 635.20(e). A person on board a vessel that has been issued or is required to be issued a permit with a shark endorsement under § 635.4 is required to use non-offset, corrodible circle hooks as specified in § 635.21(e) and (j) in order to retain sharks per the retention limits specified in this section.

\* \* \* \* \*

12. In § 635.23:

a. Revise paragraphs (a)(4), (b)(3), and (d);

- b. Remove paragraph (e);
- c. Redesignate paragraphs (f) and (g) as paragraphs (e) and (f);
- d. Revise newly redesignated paragraphs (e) introductory text and (e)(2); and
- e. Add paragraph (e)(3).

The revisions and additions read as follows:

**§ 635.23 Retention limits for bluefin tuna.**

\* \* \* \* \*

(a) \* \* \*

(4) To provide for maximum utilization of the quota for BFT, and as allowed under paragraph (a)(2) of this section, NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of five per vessel. Such increase or decrease will be based on the criteria provided under § 635.27(a)(7). NMFS will adjust the daily retention limit by filing an adjustment with the Office of the Federal Register for publication. Previously designated RFDs may be waived effective upon closure of the General category fishery so that persons aboard vessels permitted in the General category may conduct tag-and-release fishing for BFT under § 635.26(a).

(b) \* \* \*

(3) *Changes to retention limits.* To provide for maximum utilization of the quota for BFT over the longest period of time, NMFS may increase or decrease the retention limit for any size class of BFT, or change a vessel trip limit to an angler trip limit and vice versa. Such increase or decrease in retention limit will be based on the criteria provided under § 635.27(a)(7). The retention limits may be adjusted separately for persons aboard a specific vessel type, such as private vessels, headboats, or charter boats. NMFS will adjust the daily retention limit specified in paragraph (b)(2) of this section by filing an adjustment with the Office of the Federal Register for publication.

\* \* \* \* \*

(d) *Harpoon category.* (1) Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land no more than 10 large medium and giant BFT, combined, per vessel per day. The incidental catch of large medium BFT is limited as specified in paragraph (d)(2) of this section. NMFS may increase or decrease the overall daily retention limit of large medium and giant BFT, combined, per vessel per day over a range of 5 to a maximum of 10 fish per vessel per day. Such increase or decrease will be based upon the criteria under § 635.27(a)(7). NMFS will adjust the daily retention limit by filing an adjustment with the Office of the Federal Register for publication.

(2) Persons aboard a vessel permitted in the Atlantic Tunas Harpoon category may retain, possess, or land an incidental catch of no more than two large medium BFT per vessel per day, unless adjusted. NMFS may increase or decrease the incidental daily catch limit through an inseason adjustment over a range of two to a maximum of four, large medium BFT per vessel per day, based upon the criteria under § 635.27(a)(7).

(3) Regardless of the length of a trip, no more than a single day's retention limit of large medium or giant BFT may be possessed or retained aboard a vessel that has an Atlantic Tunas Harpoon category permit.

\* \* \* \* \*

(e) *Longline category.* Persons aboard a vessel permitted in the Atlantic Tunas Longline category are subject to the BFT retention restrictions in paragraphs (e)(1) through (e)(3) of this section.

\* \* \* \* \*

(2) A vessel with pelagic longline gear onboard must retain and land all dead large medium or giant BFT.

(3) A vessel permitted in the Atlantic Tunas Longline LAP category may retain, possess, land, and sell one large medium or giant BFT incidentally caught with green-

stick gear per trip, if the vessel is in compliance with all the IBQ requirements of § 635.15, including the VMS set report requirement (§ 635.69(e)(4)), and IBQ allocation and usage requirements (§ 635.15(b)).

\* \* \* \* \*

13. In § 635.24, revise paragraphs (a)(4)(i) and (iii) to read as follows:

**§ 635.24 Commercial retention limits for sharks, swordfish, and BAYS tunas.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(i) Except as provided in § 635.22(c)(7), a person who owns or operates a vessel that has been issued a directed shark LAP may retain, possess, land, or sell pelagic sharks if the pelagic shark fishery is open per §§ 635.27 and 635.28. Shortfin mako sharks may be retained by persons aboard vessels using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions of §§ 635.21(c)(1), (d)(5), and (f)(6) and 635.22(c)(7).

\* \* \* \* \*

(iii) Consistent with paragraph (a)(4)(ii) of this section, a person who owns or operates a vessel that has been issued an incidental shark LAP may retain, possess, land, or sell no more than 16 SCS and pelagic sharks, combined, per vessel per trip, if the respective fishery is open per §§ 635.27 and 635.28. Of those 16 SCS and pelagic sharks per vessel per trip, no more than 8 shall be blacknose sharks. Shortfin mako sharks may only be retained under the commercial retention limits by persons using pelagic longline, bottom longline, or gillnet gear only if NMFS has adjusted the commercial retention limit above zero pursuant to paragraph (a)(4)(v) of this section and only if the shark is dead at the time of haulback and consistent with the provisions at § 635.21(c)(1), (d)(5), and

(f)(6). If the vessel has also been issued a permit with a shark endorsement and retains a shortfin mako shark, recreational retention limits apply to all sharks retained and none may be sold, per § 635.22(c)(7).

\* \* \* \* \*

14. In § 635.27:

- a. Revise paragraphs (a) introductory text, (a)(1)(i) and (ii), and (a)(2) and (3);
- b. Remove paragraph (a)(4) and redesignate paragraphs (a)(5) through (a)(10) as paragraphs (a)(4) through (a)(9); and
- c. Revise newly redesignated paragraphs (a)(4) and (5), (a)(6)(i) and (ii), (a)(8), and (a)(9)(i), (ii), and (v).

The revisions read as follows:

**§ 635.27 Quotas.**

(a) *BFT*. Consistent with ICCAT recommendations, and with paragraph (a)(9)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. BFT quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. BFT quota will be allocated among the General, Angling, Harpoon, Longline, Trap, and Reserve categories, as described in this section. BFT quotas are specified in whole weight. The baseline annual U.S. BFT quota is 1,316.14 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. This baseline BFT quota is divided among the categories according to the following percentages: General—54 percent (710.7 mt); Angling—22.6 percent (297.4 mt), which includes the school BFT held in reserve as described under paragraph (a)(6)(ii) of this section; Longline—15.9 percent (209.3 mt) (*i.e.*, total not including the 25-mt allocation from paragraph (a)(3) of this section); Harpoon—4.5 percent (59.2 mt); Trap—0.1 percent (1.3 mt); and Reserve—2.9 percent (38.2 mt). NMFS may make

inseason and annual adjustments to quotas as specified in paragraphs (a)(8) and (9) of this section.

(1) \* \* \*

(i) Catches from vessels for which Atlantic Tunas General category permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold under the General category quota is 710.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through March 31—5.3 percent;

(B) June 1 through August 31—50 percent;

(C) September 1 through September 30—26.5 percent;

(D) October 1 through November 30—13 percent; and

(E) December 1 through December 31—5.2 percent.

(ii) NMFS may adjust each period's apportionment based on overharvest or underharvest in the prior period, and may transfer subquota from one time period to another time period, earlier in the year, through inseason action or annual specifications. For example, subquota could be transferred from the December 1 through December 31 time period to the January 1 through March 31 time period; or from the October 1 through November 30 time period to the September 1 through September 30 time period. This inseason adjustment may occur prior to the start of that year. In other words, although subject to the inseason criteria under paragraph (a)(7) of this section, the adjustment could occur prior to the start of the fishing year. For example, an inseason action transferring the 2016 December 1 through December 31 time period subquota to the 2016 January 1 through March 31 time period subquota could be filed in 2015.

\* \* \* \* \*

(2) *Angling category quota.* In accordance with the framework procedures as described under § 635.34, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of BFT that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 297.4 mt. No more than 3.1 percent of the annual Angling category quota may be large medium or giant BFT. In addition, no more than 10 percent of the baseline annual U.S. BFT quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school BFT. The Angling category quota includes the amount of school BFT held in reserve under paragraph (a)(6)(ii) of this section. The size class subquotas for BFT are further subdivided as follows:

(i) After adjustment for the school BFT quota held in reserve (under paragraph (a)(6)(ii) of this section), 52.8 percent of the school BFT Angling category quota may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining school BFT Angling category quota may be caught, retained, possessed or landed north of 39°18' N. lat.

(ii) After adjustment (Angling category quota minus school and large medium/giant subquotas), resulting in a large school/small medium subquota of 154.1 mt, an amount equal to 52.8 percent may be caught, retained, possessed, or landed south of 39°18' N. lat. The remaining large school/small medium BFT Angling category quota may be caught, retained, possessed, or landed north of 39°18' N. lat.

(iii) One fourth of the large medium and giant BFT Angling category quota may be caught retained, possessed, or landed, in each of the four following geographic areas: North of 42° N. lat.; south of 42° N. lat. and north of 39°18' N. lat.; south of 39°18' N. lat., and outside of the Gulf of Mexico; and in the Gulf of Mexico region. For the



purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at § 600.105(c) of this chapter.

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant BFT that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 209.3 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the NED, and subject to the restrictions under § 635.15(b)(6). For purposes of the closure authority under § 635.28(a)(1), regional IBQ allocations under § 635.15(c)(3) and the BFT catch cap for fishing in the Gulf of Mexico (§ 635.15(c)(3)(iii)) are considered quotas.

(4) *Harpoon category quota.* The total amount of large medium and giant BFT that may be caught, retained, possessed, landed, or sold by vessels that possess Atlantic Tunas Harpoon category permits is 59.2 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(5) *Trap category quota.* The total amount of large medium and giant BFT, that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Trap category permits is 1.3 mt.

(6) \* \* \*

(i) The total amount of BFT that is held in reserve is 38.2 mt, which may be augmented by allowable underharvest from the previous year. Consistent with paragraphs (a)(7) through (a)(9) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota. NMFS may also use any portion of the Reserve category quota for adjustments to, or appeals of, IBQ allocations (see § 635.15(e)(1)(i)) and research using quota or subquotas (see § 635.32).

(ii) The total amount of school BFT that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent of the total school BFT Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(6)(i) of this section. Consistent with paragraph (a)(7) of this section, NMFS may allocate any portion of the school BFT Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

\* \* \* \* \*

(8) *Inseason adjustments.* To be effective for all, or part of a fishing year, NMFS may transfer quotas specified under this section, among fishing categories or, as appropriate, subcategories, based on the criteria in paragraph (a)(7) of this section.

(9) \* \* \*

(i) Adjustments to category quotas specified under paragraphs (a)(1) through (a)(6) of this section may be made in accordance with the restrictions of this paragraph and ICCAT recommendations. Based on landing, catch statistics, other available information, and in consideration of the criteria in paragraph (a)(7) of this section, if NMFS determines that a BFT quota for any category or, as appropriate, subcategory has been exceeded (overharvest), NMFS may subtract all or a portion of the overharvest from that quota category or subcategory for the following fishing year. If NMFS determines that a BFT quota for any category or, as appropriate, subcategory has not been reached (underharvest), NMFS may add all or a portion of the underharvest to, that quota category or subcategory, and/or the Reserve category for the following fishing year. The underharvest that is carried forward may not exceed 100 percent of each category's baseline allocation specified in paragraph (a) of this section, and the total of the adjusted fishing category quotas and the Reserve category quota must be consistent with ICCAT recommendations. Although quota may be carried over for the Longline category as a

whole, IBQ shares and IBQ allocations may not be carried over from one year to the next, as specified under § 635.15(f).

(ii) NMFS may allocate any quota remaining in the Reserve category at the end of a fishing year to any fishing category, provided such allocation is consistent with the determination criteria specified in paragraph (a)(7) of this section.

\* \* \* \* \*

(v) NMFS will file any annual adjustment with the Office of the Federal Register for publication and specify the basis for any quota reduction or increases made pursuant to this paragraph (a)(9).

\* \* \* \* \*

15. In § 635.28, revise paragraphs (a)(1) and (2) to read as follows:

**§ 635.28 Fishery closures.**

(a) \* \* \*

(1) When a BFT quota specified in § 635.27(a) has been reached, or projected to be reached, NMFS will file a closure action with the Office of the Federal Register for publication. On and after the effective date and time of such action, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

(2) If NMFS determines that variations in seasonal distribution, abundance, or migration patterns of BFT, or the catch rate in one area, precludes participants in another area from a reasonable opportunity to harvest any allocated domestic category quota, as stated in § 635.27(a), NMFS may close all or part of the fishery under that category. NMFS may reopen the fishery at a later date if NMFS determines that reasonable fishing opportunities are available, *e.g.*, BFT have migrated into the area or weather is conducive

for fishing. In determining the need for any such interim closure or area closure, NMFS will also take into consideration the criteria specified in § 635.27(a)(7).

\* \* \* \* \*

**§ 635.29 [Amended]**

16. In § 635.29, remove paragraph (c).

17. In § 635.31, revise paragraph (a)(1) to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

(a) \* \* \*

(1) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit with a commercial sale endorsement; a valid Atlantic Tunas General, Harpoon, Longline, or Trap category permit; or a valid HMS Commercial Caribbean Small Boat permit issued under this part, and the appropriate category has not been closed, as specified at § 635.28(a). However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic BFT only to a dealer that has a valid permit for purchasing Atlantic BFT issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

\* \* \* \* \*

18. In § 635.34, revise paragraph (b) to read as follows:

**§ 635.34 Adjustment of management measures.**

\* \* \* \* \*

(b) In accordance with the framework procedures in the 2006 Consolidated HMS FMP, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: Maximum sustainable yield or optimum yield based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions, or regional and/or sub-regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; workshop requirements; the IBQ shares or resultant allocations for BFT; administration of the IBQ program (including but not limited to requirements pertaining to leasing of IBQ allocations, regional or minimum IBQ share requirements, IBQ share caps (individual or by category), permanent sale of shares, NED IBQ rules, *etc.*); *de minimis* BFT quota set-aside for new entrants and associated requirements, process and conditions; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restriction; effort restrictions; observer coverage requirements; EM requirements; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

\* \* \* \* \*

19. In § 635.69, revise paragraphs (a) introductory text and (a)(1) and (4), add paragraph (a)(5), and revise paragraphs (e)(4) introductory text and (e)(4)(ii) to read as follows:

**§ 635.69 Vessel monitoring systems.**

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, enhance reporting, and support the IBQ Program (§ 635.15), an owner or operator of a commercial vessel that has been issued or is required to be issued an Atlantic Tunas Longline category LAP or a vessel that is permitted, or required to be permitted, to fish

for Atlantic HMS under § 635.4 and that fishes with pelagic or bottom longline or gillnet gear is required to install a NMFS-approved enhanced mobile transmitting unit (E-MTU) vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the circumstances listed in paragraphs (a)(1) through (a)(5) of this section. For purposes of this section, a NMFS-approved E-MTU VMS is one that has been approved by NMFS as satisfying its type approval listing for E-MTU VMS units. Those requirements are published in the **Federal Register** and may be updated periodically.

(1) Whenever the vessel has pelagic longline gear on board;

\* \* \* \* \*

(4) A vessel is considered to have pelagic or bottom longline gear on board, for the purposes of this section, when the gear components as specified at § 635.2 are on board. A vessel is considered to have gillnet gear on board, for the purposes of this section, when gillnet, as defined in § 600.10 of this chapter, is on board a vessel that has been issued a shark LAP.

(5) Whenever a vessel issued an Atlantic Tunas Longline permit has green-stick gear on board.

\* \* \* \* \*

(e) \* \* \*

(4) BFT and fishing effort reporting requirements for vessels fishing with pelagic longline gear or vessels issued an Atlantic Tunas Longline category LAP fishing with green-stick gear.

\* \* \* \* \*

(ii) *Green-stick gear*. The owner or operator of a vessel with an Atlantic Tunas Longline permit that is fishing with green-stick gear must report to NMFS using the attached VMS terminal, or using an alternative method specified by NMFS as follows: For each green-stick set that interacts with BFT, as instructed by NMFS, the date and

area of the set, the length of BFT retained (actual), and the numbers and lengths of all BFT discarded dead or alive (approximate), must be reported within 12 hours of the completion of the retrieval of each set.

\* \* \* \* \*

20. In § 635.71:

- a. Revise paragraphs (a)(14) and (37) and (b)(3), (8) through (10), and (17);
- b. Remove and reserve paragraphs (b)(18) and (20) through (22).
- c. Revise paragraphs (b)(30), (31), and (33) through (36), (39) through (41), (46) through (59), (c)(7), (d)(13), (22), (23), (25), and (28), and (e)(11) and (17).

The revisions and additions read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(14) Fail to install, activate, repair, or replace a NMFS-approved E-MTU vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or gillnet gear on board the vessel, or with green-stick gear on board a vessel issued an Atlantic Tunas Longline category permit as specified in § 635.69.

\* \* \* \* \*

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark gillnet gear as required by § 635.21(f)(1).

(b) \* \* \*

(3) Fish for, catch, retain, or possess a BFT less than the large medium size class by a person aboard a vessel other than one that has on board a valid HMS Angling or Charter/Headboat permit as authorized under § 635.23(b) and (c).

\* \* \* \* \*

(8) Fail to pay cost recovery fees as instructed by NMFS, as specified at § 635.15(m)(4).

(9) Hold or acquire more than 25 percent of the total IBQ shares or associated allocations annually as specified under § 635.15(n).

(10) Fail to retain and land all dead large medium or giant BFT when pelagic longline gear is on board a vessel, as specified in § 635.23(e)(2).

\* \* \* \* \*

(17) Fish for, catch, retain, or possess BAYS tunas with gear not authorized for the category permit issued to the vessel, as specified in § 635.19(b).

\* \* \* \* \*

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(h).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(h).

\* \* \* \* \*

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(h).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(h).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat category permit, as specified at § 635.21(h).

(36) Possess J-hooks onboard a vessel that has pelagic longline gear on board, and that has been issued or required to be issued a LAP under this part, except when green-stick gear is on board, as specified at § 635.21(c)(2)(iv) and (c)(5)(iii)(C).

\* \* \* \* \*



(39) Use or deploy more than 10 hooks at one time on any individual green-stick gear, as specified in § 635.21(c)(2)(iv), (c)(5)(iii)(C), or (i).

(40) Possess, use, or deploy J-hooks smaller than 1.5 inch (38.1 mm), when measured in a straight line over the longest distance from the eye to any part of the hook, when fishing with or possessing green-stick gear on board a vessel that has been issued or required to be issued a LAP under this part, as specified at § 635.21(c)(2)(iv) or (c)(5)(iii)(C).

(41) Fail to report BFT catch by pelagic longline, through VMS as specified at § 635.69(e)(4).

\* \* \* \* \*

(46) Deploy or fish with any fishing gear from a vessel with a pelagic longline on board that does not have an approved and fully operational, working EM system as specified in § 635.9; tamper with, or fail to install, operate or maintain one or more components of the EM system; obstruct the view of the camera(s); or fail to handle BFT in a manner that allows the camera to record the fish as specified in § 635.9; or fail to comply with the standardized reference grid, hard drive, vessel monitoring plan and other requirements under § 635.9.

(47) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without a minimum amount of IBQ allocation available for that vessel, as specified in § 635.15(f)(2), as applicable.

(48) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board without accounting for BFT as specified in § 635.15(f)(3).

(49) Lease BFT quota allocation to or from the owner of a vessel not issued a valid Atlantic Tunas Longline permit as specified under § 635.15(g)(1).

(50) Fish in the Gulf of Mexico with pelagic longline gear on board if the vessel has only designated Atlantic IBQ allocation, as specified under § 635.15(c)(3).

(51) Depart on a fishing trip or deploy or fish with any fishing gear from a vessel with a pelagic longline on board in the Gulf of Mexico, without a minimum amount of designated GOM IBQ allocation available for that vessel, as specified in § 635.15(f)(2).

(52) If leasing IBQ allocation, fail to provide all required information on the application, as specified under § 635.15(g)(2).

(53) Lease IBQ allocation in an amount that exceeds the amount of IBQ allocation associated with the lessor, as specified under § 635.15(g)(2).

(54) Sell quota share, as specified under § 635.15(h).

(55) Fail to provide BFT landings and dead discard information as specified at § 635.15(f)(3)(iii).

(56) Fish with or have pelagic longline gear on board if any quota debt associated with the permit from a preceding calendar year quarter has not been settled as specified in § 635.15(f)(4)(i).

(57) Lease IBQ allocation during the period from 6 p.m. December 31 to 2 p.m. January 1 (Eastern Time) as specified at § 635.15(g)(3)(iv).

(58) Lease IBQ allocation if the conditions of § 635.15(g)(2) are not met.

(59) Fish with or have pelagic longline gear on board if any annual level quota debt associated with the vessel from a preceding year has not been settled, as specified at § 635.15(f)(4)(ii).

(c) \* \* \*

(7) Deploy a J-hook or an offset circle hook in combination with natural bait or a natural bait/artificial lure combination when participating in a tournament for, or including, Atlantic billfish, as specified in § 635.21(e).

\* \* \* \* \*

(d) \* \* \*

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21(f).

\* \* \* \* \*

(22) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when fishing at a registered recreational HMS fishing tournament that has awards or prizes for sharks, as specified in § 635.21(e) and (j).

(23) Except when fishing only with flies or artificial lures, fish for, retain, possess, or land sharks without deploying non-offset, corrodible circle hooks when issued an Atlantic HMS Angling permit or HMS Charter/Headboat category permit with a shark endorsement, as specified in § 635.21(e) and (j).

\* \* \* \* \*

(25) Fail to follow the fleet communication and relocation protocol for dusky sharks as specified at § 635.21(c)(6), (d)(2), and (f)(5).

\* \* \* \* \*

(28) Retain, land, or possess a shortfin mako shark that was caught with pelagic longline, bottom longline, or gillnet gear and was alive at haulback as specified at § 635.21(c)(1), (d)(5), and (f)(6).

\* \* \* \* \*

(e) \* \* \*

(11) Possess or deploy more than 35 individual floatation devices, to deploy more than 35 individual buoy gears per vessel, or to deploy buoy gear without affixed monitoring equipment, as specified at § 635.21(g).

\* \* \* \* \*

(17) Fail to construct, deploy, or retrieve buoy gear as specified at § 635.21(g).

\* \* \* \* \*

